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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
v.) No. 08 Civ. 4612 (SWK)
)
)
JOHN MICHAEL KELLY, STEVEN E.)
RINDNER, JOSEPH A. RIPP, and)
MARK WOVSANIKIER,)
)
Defendants.)
)

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT STEVEN E. RINDNER'S MOTION TO SEVER AND
TRANSFER CASE TO THE EASTERN DISTRICT OF VIRGINIA**

I. Introduction

For the better part of this decade, the federal government, including the Securities and Exchange Commission (“SEC”), has been unsuccessfully seeking to hold former executives of America Online, Inc. (“AOL”) liable for securities fraud. After the government suffered resounding trial defeats in related cases in appropriate venues – the Eastern District of Virginia

and the District of Columbia – the SEC now looks to a third jurisdiction in the hopes of finding a friendly forum for its twice-rejected claims.

The decision to file this action against Steven Rindner in the Southern District of New York constitutes improper forum-shopping of the most obvious sort. The Complaint against Mr. Rindner does not allege that he committed a single act in this district. Each and every act by him is alleged to have occurred in the Eastern District of Virginia; nearly all at AOL's headquarters in Dulles, Virginia, where Mr. Rindner (like most of the other defendants) worked. Similarly, most key witnesses for Mr. Rindner, and almost assuredly for the SEC against Mr. Rindner, are located within 100 miles of the Eastern District of Virginia. Not one of Mr. Rindner's primary witnesses, and likely few or none of the SEC's important witnesses against Mr. Rindner, are located in or around the Southern District of New York. Mr. Rindner himself currently works in, and lives near, the Eastern District of Virginia. Mr. Rindner's attorneys, and the SEC lawyers assigned to the case, all live in or work near the Eastern District of Virginia. In short, every salient fact – alleged in the Complaint and outside of it – ties Mr. Rindner's case to the Eastern District of Virginia. *See Dealtime.com Ltd. v. McNulty*, 123 F. Supp. 2d 750, 754-55 (S.D.N.Y. 2000).

While the SEC may fear returning to the scene of a stinging defeat in a related case, the Eastern District of Virginia is clearly the appropriate locale to bring Mr. Rindner to trial. He respectfully requests that his case be transferred there, and severed as necessary to accomplish that transfer.¹

¹ Alternatively, the case legitimately could be transferred to the District of Columbia. The SEC filed its related action against AOL-Time Warner in the District of Columbia, *SEC v. Time Warner, Inc.*, No. 05-0578; Mr. Rindner works and lives within 100 miles of the District of Columbia; his key witnesses are within 100 miles of the District of Columbia; all acts alleged against Mr. Rindner occurred within 100 miles of the District of Columbia; and the SEC is

II. Factual Background

A. Location of Relevant Events

Defendant Steven Rindner presently works in Arlington, Virginia, and lives in nearby Potomac, Maryland. From December 1999 until February 2003, Mr. Rindner worked at AOL in its Dulles, Virginia headquarters. At all times relevant to the allegations in the Complaint, Mr. Rindner worked in the Business Affairs unit of AOL.

The Complaint focuses on AOL advertising transactions with eight counterparties in which Business Affairs played a role – Sun, Wembley/Ticketmaster, Veritas, Hewlett-Packard (“HP”), Telefonica, WorldCom and Bertelsmann – all of which were largely, if not entirely, structured and negotiated by AOL in Dulles. *See AOL’s Rule 21(a) Reports filed Oct. 23, 2002, Nov. 15, 2002, Nov. 22, 2002, Nov. 27, 2002, Dec. 13, 2002 and Feb. 28, 2003 (listing deal employees)* (cover pages attached hereto as Ex. 1).² The Complaint mentions Mr. Rindner, at times peripherally, in connection with deals involving seven of those counterparties.³

located in the District of Columbia. In *SEC v. Johnson*, Civ. Action No. 05-36 (GK), another related proceedings brought in the District of Columbia, the SEC argued strenuously and successfully in favor of the District of Columbia as the proper forum. That case involved two employees of AOL and three from a Nevada-based AOL partner; while no acts were alleged to have taken place in the District of Columbia, Judge Gladys Kessler nonetheless found venue to be proper. Certainly, the ties to the District of Columbia are as strong here as they were in *Johnson*. Indeed, as the SEC still has a related pending case in the District of Columbia before Judge Kessler, who also presided over *SEC v. Time Warner, Inc.*, the District of Columbia is also a more logical venue than this one.

² To avoid burdening this Court, Mr. Rindner has not attached each document cited herein. The documents not attached are in the possession of the SEC or publicly available, and if this Court wishes to review them, will be filed under separate cover.

³ The SEC does not allege that Mr. Rindner participated in, or had any knowledge of, the Sun transaction. The Complaint also names Mr. Rindner only nominally in connection with some of the other transactions. Mr. Rindner repeatedly has requested that the SEC identify which transactions it is relying on for its claims against him, but the SEC has not responded.

At all times relevant to this action, Mr. Rindner's primary job responsibility was to manage the Business Affairs "pipeline." *See, e.g., United States v. Wolff*, CR 05-0398 PA, Reporter's Transcript of Proceedings, Apr. 26, 2006. That involved monitoring the status of AOL's advertising transactions with third parties and reporting on their status to AOL's accounting, finance and legal departments. *See id.*

The vast majority of the Rindner-specific allegations reflect that limited role. On the deals with three of the counterparties, the Complaint only alleges that Mr. Rindner sent or received an e-mail about the deal after it had closed. With respect to Veritas, Rindner is alleged to have "sent an e-mail to a Business Affairs employee (with a copy to [Defendant Mark] Wovsaniker)" on January 17, 2001. Compl. ¶ 78. That unnamed Business Affairs employee is Jim Patti, who, like Messrs. Rindner and Wovsaniker, worked at AOL's Dulles headquarters. *See AOL Business Affairs/Corp Dev Department Phone List*, Dec. 4, 2000 (attached hereto as Ex. 2); e-mail from S. Rindner to J. Patti, dated Jan. 17, 2001 (attached hereto as Ex. 3). The SEC also alleges that Mr. Rindner received an e-mail about the HP deal in December 2001, more than a year after the deal was executed. Compl. ¶ 93. That e-mail was sent by a "member of the AOL negotiating team" named Jeff Tyeryar, who worked in AOL Business Affairs in Dulles. *See AOL Business Affairs and Development Office Phone Numbers, Locations*, Jul. 18, 2001 (attached hereto as Ex. 4); e-mail from J. Tyeryar to E. Prince, S. Rindner, dated Dec. 14, 2001 (attached hereto as Ex. 5). In addition, on Wembley, the complaint alleges that Mr. Rindner received a series of e-mails about the "true" nature of the transaction. Compl. ¶ 154. Again, all of the individuals included on these e-mails – Greg Rigdon and Eric Keller (both in Business Affairs) as well as Diana Dunbar – worked at AOL's Dulles headquarters. *See, e.g., AOL Business Affairs and Development Office Phone Numbers, Locations*, Jul. 18, 2001; BA/Corp

Dev Dept. List; e-mail from S. Rindner to E. Keller, G. Rigdon, D. Dunbar, dated Feb. 2, 2002 (attached hereto as Ex. 6).

Regarding the remaining deals, Mr. Rindner's alleged involvement likewise occurred in or around Dulles, Virginia. On Bertelsmann, Mr. Rindner is alleged to have participated in internal discussions about the gap between company revenue targets and actual revenue, and tracked the amount of Bertelsmann revenue. Compl. ¶¶ 142-43. Such conduct would be consistent with Mr. Rindner's normal pipeline responsibilities, which he at all times discharged in Dulles. On WorldCom, the SEC alleges, among other things, that Mr. Rindner interacted with "his counterpart at WorldCom." Compl. ¶ 173.⁴ That "counterpart" was Victoria Harker, who worked at the time at MCI headquarters in nearby Arlington, Virginia. *See, e.g.*, e-mail from S. Rindner to V. Harker, dated Nov. 21, 2001 (attached hereto as Ex. 7); *see also* <http://www.zoominfo.com> (Victoria Harker resumé).

With respect to the Telefonica deal, Mr. Rindner is alleged to have negotiated and documented the transaction (Compl. ¶¶ 103-04), which he would have done from Dulles, and instructed Dulles-based Jim Patti to make certain promises to Telefonica (Compl. ¶105). The SEC also contends that Mr. Rindner participated in a purportedly revealing instant message exchange about the deal with three AOL lawyers – Josh Resnick, Brian Heller and Karen Litsinger – all of whom, like Mr. Rindner, worked at AOL's Dulles campus.⁵ *See* Instant

⁴ The complaint also alleges that Mr. Rindner wrote e-mails to his boss (David Colburn, the head of Business Affairs, who also worked in Dulles) about the WorldCom transaction and directed the drafting of deal documents.

⁵ The same is largely true of the other defendants. At all relevant times, Mark Wovsaniker worked at AOL's Dulles, Virginia campus. *See, e.g.*, Wovsaniker Dep. 36:5-37:6, *In re AOL Time Warner, Inc. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jul. 24, 2006 (attached hereto as Ex. 12). Similarly, Joseph Ripp was based in Dulles during the period of time in which the SEC takes issue with his conduct. *See, e.g.*, <http://www.marketwatch.com/news/story/aol-appoints-time-warner-executive/>

Message exchange, dated Dec. 7, 2000 (attached hereto as Ex. 8); *see also, e.g.*, Siobhan Roth, “Work Hard, Have Fun, Get Rich,” *Legal Times*, Aug. 14, 2000.

B. Location Of The Relevant Witnesses

Like Mr. Rindner, the key witnesses in his case worked in AOL’s headquarters in Dulles, Virginia, and most continue to reside in that area. That includes the individuals who structured and negotiated the deals in question.⁶ It also includes a significant majority of the other individuals who have been identified by AOL to the SEC as the “deal employees” on the transactions at issue.⁷ Also located in the Northern Virginia area at the time were most of the McLean-based Ernst & Young accountants who audited AOL’s financial statements.⁸ It is from that universe that the majority of Mr. Rindner’s witnesses, and presumably the SEC’s witnesses against him, will come.

[story.aspx?guid=%7B2FE10438%2DEE80%2D4EB1%2D8027%2D74F47455A098%7D](#). And with the exception of the 10 months that John Michael Kelly worked at AOLTW headquarters in New York, he too worked on AOL’s Virginia campus. *See* Kelly Dep. 29:13-32:14, *In re AOL Time Warner, Inc. & “ERISA” Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jul. 26, 2006 (attached hereto at Ex. 13).

⁶ That group includes David Colburn, Eric Keller, James MacGuidwin, and Jay Rappaport—the four AOL executives who settled with the SEC to a contemporaneously-filed complaint containing allegations about the same transactions. *See* Complaint, *SEC v. Colburn*, 08 CV 4611, filed May 19, 2008.

⁷ These include Brian Heller, Adam Lehman, Karen Litsinger, Geraldine MacDonald, Jim Patti, Edward Prince, Greg Rigdon, Jeff Tyeryar, and John Underwood. *See, e.g.*, <http://www.linkedin.com>.

⁸ That includes Gregory Beams, Stephen Hurst, and Harry Edward Paul. *See* Beams Dep. 11:16-12:3, 12:22-13:2, *In re AOL Time Warner, Inc. & “ERISA” Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jun. 15, 2006 (attached hereto as Ex. 14); Hurst Dep. 22:19-25, *In re AOL Time Warner, Inc. & “ERISA” Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jul. 11, 2006 (attached hereto as Ex. 15).

C. The Prior Government Defeats

In 2005, the government brought three cases against AOL or its employees arising from interactive marketing relationships with third parties. In the Eastern District of Virginia, the DOJ prosecuted two former AOL executives and a senior executive of an AOL business partner in a criminal securities fraud action. *See United States v. Benyo*, Crim. No. 1:05CR12. In February 2007, all three defendants were acquitted. *See Carrie Johnson, "3 Acquitted in Lengthy AOL Trial: Emotional Victory is Blow to Federal Prosecutors," Wash. Post*, Feb. 7, 2007, at D1.

In the District of Columbia, the SEC filed two complaints, one against AOL Time Warner (“AOLTW”) (*SEC v. Time Warner, Inc.*, No. 05-cv-578), and one against two former AOL executives and three employees of an AOL business partner (*SEC v. Johnson*, No. 05-cv-36 (GK)). As the SEC argued at the time, the two cases were related because AOL’s interactive marketing relationships with certain partners in 2000-2002 created common issues of fact and arose out of the same general events. *See* SEC’s Notice of Designation of Related Civil Cases, filed March 21, 2005 in *SEC v. Time Warner, Inc.*, No. 05-0578 (attached hereto as Ex. 9). Both cases were assigned to Judge Gladys Kessler.

The case against the Company quickly settled. The case against the individual defendants, however, ended with a well publicized trial loss for the Government. *See* “Two Cleared of Fraud Charges,” *Wash. Post*, Apr. 25, 2008, at D4. Three of the defendants, including a former member of AOL’s Business Affairs unit, went to trial in March 2008. Two of those defendants, including the AOL employee, were found not liable on all charges. The third defendant was found liable on just one of four counts. The two remaining defendants, including one former AOL employee, are yet to be tried before Judge Kessler. Accordingly, despite its resolute efforts to impose civil and criminal liability on former AOL employees, to date the

government has lost every count against all former AOL employees who have contested the charges against them arising from marketing relationships with partner entities.

Undeterred by its sad track record, and the lack of any connection between Mr. Rindner and this forum, the SEC filed this case in the Southern District of New York on May 19, 2008. It did so after nearly seven years of investigation, and two and a half years after first notifying the defendants of its intention to bring suit. Even after filing its Complaint, the SEC did not serve the Complaint for almost six weeks, despite Mr. Rindner's repeated indications that he was willing to waive service of process within days of the Complaint's filing.

III. Argument

A. Applicable Legal Principles

Section 1404 of Title 28 of the United States Code provides: "For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The purpose of § 1404(a) "is to prevent waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *ZPC 2000 v. The SCA Group, Inc.*, 86 F. Supp. 2d 274, 278 (S.D.N.Y. 2000) (citing *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964)) (internal quotation marks omitted). Courts look to "notions of convenience and fairness" in determining whether to transfer a case. *Dealtime.com*, 123 F. Supp. at 754.

In deciding a motion to transfer venue, courts consider the following factors: "(1) the convenience of the witnesses; (2) the convenience of the parties; (3) the locus of operative facts; (4) the availability of process to compel the attendance of unwillingness witnesses; (5) the location of relevant documents and the relative ease of access to sources of proof; (6) the relative

means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded to the plaintiff's choice of forum; and (9) trial efficiency and the interest of justice, based on the totality of the circumstances." *Dealtime.com*, 123 F. Supp. 2d at 755; *see also Platt v. Minn. Mining & Mfg. Co.*, 376 U.S. 240, 243-44 (1964) (listing factors); *Rubinstein v. Skyteller, Inc.*, 48 F. Supp. 2d 315, 325 (S.D.N.Y. 1999) (quoting *Purcell Graham, Inc. v. Nat'l Bank of Detroit*, 1994 U.S. Dist. LEXIS 15196, at *11 (S.D.N.Y. Oct. 24, 1994)). No single factor "is controlling in itself." *Tomchuck v. Union Trust Co.*, 875 F. Supp. 242, 243 (S.D.N.Y. 1995) (citing *Gulf Oil v. Gilbert*, 330 U.S. 501, 508 (1947)). Transfer is warranted when "the balance of these factors weighs collectively in favor of the movant's proposed forum." *Purcell Graham, Inc. v. Nat'l Bank of Detroit*, 1994 U.S. Dist. LEXIS 15196, at *12 (S.D.N.Y. Oct. 24, 1994). Denial of a motion to transfer, where transfer is warranted, is an abuse of discretion. *See D. H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 105 (2d Cir. 2006).

B. Transfer Of Venue Is Warranted Because It Would Greatly Convenience Mr. Rindner And His Potential Witnesses, Would Conserve Judicial Resources, And Is In The Interest Of Justice

The SEC's choice to litigate in New York bears all the markings of gamesmanship and forum-shopping of the most objectionable kind. In light of the billion-dollar settlement in the AOL/TW shareholder litigation,⁹ the SEC likely views the Southern District as a more hospitable forum to charge former AOL employees, and one less familiar with the government's futility in these matters. Given the lack of any connection between Mr. Rindner and New York, the SEC's motive is transparent: avoid litigating at all costs in appropriate districts where the government has already failed.

⁹ While Mr. Rindner was a defendant *In re AOL Time Warner, Inc. Sec. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), the consolidated shareholder class actions, there is absolutely no overlap between the allegations made against him in that case and the SEC's allegations here.

Indeed, not a single relevant factor weighs in favor of proceeding against Steven Rindner in the Southern District of New York. To the contrary, the vast majority of relevant factors weigh conclusively in favor of transfer to the Eastern District of Virginia. The convenience of Mr. Rindner (and the SEC), the convenience of the witnesses, the availability of process to compel unwilling witnesses, the locus of operative events, efficiency considerations, and the interests of justice all point toward transfer. None of the few remaining factors supports keeping this case in the Southern District of New York. Transfer to the Eastern District of Virginia is thus logical and wholly warranted.

1. Convenience of the Parties and of Potential Witnesses

“The convenience of the parties and the convenience of the witnesses are generally considered the most important factors” in determining whether to transfer venue. *Promuto v. Waste Management, Inc.*, 44 F. Supp. 2d 628, 638 (S.D.N.Y. 1999). Both weigh strongly in favor of transferring this proceeding to the Eastern District of Virginia.

a) Convenience of Mr. Rindner and the SEC

There can be no question that the convenience of the parties suggests a need to transfer the case. The convenience inquiry starts with “consideration of the residence of the parties.” *Wine Markets Int’l Inc. v. Bass*, 939 F. Supp. 178, 182 (E.D.N.Y. 1996); *Hernandez v. Graebel Van Lines*, 761 F. Supp. 983, 988 (E.D.N.Y. 1991) (citing *Heyco, Inc. v. Heyman*, 636 F. Supp. 1545, 1550 (S.D.N.Y. 1986)). Although the convenience of the parties factor does not support a decision to transfer venue where such transfer “merely shift[s] the inconvenience of litigating in a particular forum from one party to the other[,]” where “neither party resides in the chosen forum,” logic dictates that the case should be transferred to the residence of one of them. *Dealtime.com*, 123 F. Supp. 2d at 756.

Neither Mr. Rindner nor the SEC is based in the Southern District of New York. Mr. Rindner works in the Eastern District of Virginia, and lives nearby with his wife and three young daughters. Transferring this case to the Eastern District of Virginia thus would limit the hardship to Mr. Rindner's employment, and not force Mr. Rindner to relocate away from his family for three or more months of trial. In addition, the SEC is headquartered in Washington, D.C., very close to the Eastern District of Virginia. No attorneys from the SEC's New York Regional Office are apparently working on the case, but all seven SEC attorneys listed on the complaint are based in Washington, D.C. *See Complaint, SEC v. Kelly*, 08 CV 4612 (SWK), filed May 19, 2008. That is not a surprise, since the seven-year investigation that preceded this litigation was at all times conducted out of SEC headquarters. Indeed, the SEC's lead trial counsel recently volunteered to host the parties' Fed. R. Civ. P. 26(f) Conference at the SEC's Washington headquarters for his and his colleagues' convenience.

Thus, transfer of this case to the Eastern District of Virginia will not result in shifting of inconvenience from defendants to the SEC. Instead, it will greatly increase the convenience to Mr. Rindner and the plaintiff alike.

b) Convenience of Potential Witnesses

Courts weigh the convenience of the witnesses factor not based on the "number of prospective witnesses . . . but, rather, [by assessing] the materiality of their anticipated testimony." *Promuto*, 44 F. Supp. 2d at 639 (quoting *Dwyer v. Gen. Motors Corp.*, 853 F. Supp. 690, 693-94 (S.D.N.Y. 1994)). In this case, both the number of prospective witnesses and the materiality of their anticipated testimony weigh toward transfer.

Mr. Rindner's most important witnesses will be current and former AOL employees, such as David Colburn, Edward Prince, Eric Keller, John Underwood, Adam Lehman, Brian Heller,

Karen Litsinger, Jay Rappaport and Jeff Wilsey. All but one of these individuals has been identified by AOL to the SEC as being part of the deal team on one or more of the transactions at issue. *See, e.g.*, AOL's Rule 21(a) Reports filed Oct. 23, 2002, Nov. 15, 2002, Nov. 22, 2002, Nov. 27, 2002, and Dec. 13, 2002 (listing deal employees). On information and belief, many of these witnesses will testify that they were involved in the deals in question – and, in certain instances, the specific events alleged – but did not believe they were doing anything improper, let alone participating in a fraud.¹⁰ *See, e.g.*, Prince Dep. 145:14-157:9, *In re AOL Time Warner, Inc. Sec. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Aug. 31, 2006 (attached hereto as Ex. 10). Several are expected to testify that Mr. Rindner's role on these transactions was limited or peripheral, and consistent with his responsibilities for managing the interactive marketing pipeline. In addition, a former Ernst & Young auditor, Harry Edward Paul, can provide critical testimony that plainly refutes the SEC's Telefonica and Bertelsmann allegations. Paul is expected to testify he was part of the team of Ernst & Young auditors who closely scrutinized the Bertelsmann and Telefonica transactions on multiple occasions and determined that the advertising revenue did not need to be restated. Paul is further expected to

¹⁰ For example, the SEC alleges that the fraudulent nature of the WorldCom advertising deal was described in a November 5, 2001 e-mail that Mr. Rindner received. Compl. ¶¶ 171, 173. Edward Prince also received that e-mail, and he responded to it. Based on his testimony in another proceeding, Prince is expected to testify that he did not know what the e-mail was referring to, and sought additional input from another individual involved with the negotiation, who believed WorldCom was confused about the deal. Prince also made clear that the e-mail did not raise any concern with him about the propriety of the transaction. Prince Dep. 152:6-157:9, *In re AOL Time Warner, Inc. Sec. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Aug. 31, 2006 (attached hereto as Ex. 10); *see also* Colburn Testimony 191:14-23, 193:9-10, *In re AOL Time Warner*, No. HO-9249, Apr. 25, 2007 (attached hereto as Ex. 16). In addition, the SEC alleges that the WorldCom advertising deal was fraudulent because Mr. Rindner and others knew that WorldCom did not want online advertising. Compl. ¶ 170. On information and belief, several witnesses, including David Colburn, believed that the author of the November 5, 2001 e-mail had a tendency to make inflammatory remarks and take things out of context. Others share the sentiment. *See, e.g.*, Colburn Testimony 191:14-23, 193:9-10, *In re AOL Time Warner*, No. HO-9249, Apr. 25, 2007 (Ex. 16).

testify that as part of its review, Ernst & Young considered many of the same documents and theories raised in the Complaint and nonetheless stood by the Bertelsmann and Telefonica revenue. *See generally*, Testimony of Harry Edward Paul, *In re AOL Time Warner*, HO-9429, Jun. 7, 2004; *see also* Memorandum to AOL Investigation Files from Eddie Paul, Nov. 6, 2002 (“Telefonica DataCorp., S.A.U. (Telefonica) December 2000 Agreements as to When Fair Value of Advertising Sold Under Umbrella Advertising Agreements Should Be Evaluated”) (attached hereto as Ex. 11).

All of these witnesses presently live within 35 miles of the Alexandria, Virginia federal courthouse. Their testimony substantially undermines the SEC’s case and will be critical to determining both whether Mr. Rindner in fact acted as the SEC contends, and whether he did so with scienter. Put simply, the testimony of these witnesses will be essential to Mr. Rindner’s defense.

Not only is the Eastern District of Virginia a much more convenient forum for Mr. Rindner’s key witnesses, it is also, on balance, considerably more convenient for the SEC’s likely witnesses against Mr. Rindner. The transactions at issue were primarily negotiated on AOL’s behalf in Dulles, Virginia, within the Eastern District of Virginia. Most of the individuals identified by AOL to the SEC as members of the relevant deal teams worked at AOL’s headquarters. *See, e.g.*, AOL’s Rule 21(a) Reports filed Oct. 23, 2002, Nov. 15, 2002, Nov. 22, 2002, Nov. 27, 2002, Dec. 13, 2002, and Feb. 28, 2003 (listing deal employees) (Ex. 1). A majority of them still currently reside in or near the Eastern District of Virginia. It seems unfathomable that the majority of AOL’s witnesses against Mr. Rindner will reside outside of 100 miles of the Alexandria courthouse, and certainly many more will reside in or around the Eastern District of Virginia than the Southern District of New York.

Transfer to the Eastern District of Virginia will greatly convenience all of these witnesses and allow Mr. Rindner to present his case fairly. This factor thus also weighs heavily in favor of transfer.

2. Availability of Process to Compel Attendance of Unwilling Witnesses

In addition, transfer to the Eastern District of Virginia will make available process to compel these witnesses to appear at trial. This consideration is especially important. *Rubinstein*, 48 F. Supp. 2d at 325 (“the availability of process to require non-party witnesses to testify is the most compelling consideration”) (quoting *Purcell Graham*, 1994 WL 15196, at *15) (internal quotation marks omitted). Nearly all of Mr. Rindner’s key witnesses are non-party witnesses. Because the vast majority of these witnesses live within 100 miles of the Eastern District of Virginia, that court can compel them to appear at trial. The Southern District of New York, on the other hand, lacks any power of compulsion over these witnesses, and there is no indication that any of them would voluntarily travel to the Southern District of New York at Mr. Rindner’s request. Indeed, counsel for some non-party witnesses have indicated that their clients are not willing to travel to the Southern District to testify in this case. This Court thus should ensure that the “jury . . . have the opportunity to observe these witnesses and evaluate their demeanor[.]” *Purcell Graham*, 1994 U.S. Dist. LEXIS 15196, at *19. The availability of process to compel the attendance of Mr. Rindner’s key witnesses plainly warrants transfer to the Eastern District of Virginia.

3. The Locus of Operative Events

The location of the operative events is a “primary factor” in determining whether to transfer venue. *Dealtimetime.com*, 123 F. Supp. 2d at 756; *ZPC 2000*, 86 F. Supp. 2d at 279 (citing *Smart v. Goord*, 21 F. Supp. 2d 309, 216 (S.D.N.Y. 1998)). “Courts routinely transfer cases

when the principal events occurred and the principal witnesses are located in another district.”

Berman v. Informix Corp., 30 F. Supp. 2d 653, 658 (S.D.N.Y. 1998); *see also Mobile Video Services Ltd. v. Nat'l Ass'n of Broadcast Employees and Technicians*, 574 F. Supp. 668, 670 (S.D.N.Y. 1983) (transferring case to district where, as here, the “material occurrences which formed the factual basis for” the litigation took place). Courts also consider the “local interest in having the controversy decided in the district.” *Kelly v. MD Buyline, Inc.*, 2 F. Supp. 2d 420, 441 (S.D.N.Y. 1998).

In this case, every single principal event underlying the SEC’s allegations against Mr. Rindner occurred in Virginia.¹¹ The Complaint mentions Mr. Rindner in connection with advertising transactions with seven AOL counterparties, each of which was structured and negotiated on behalf of AOL in Northern Virginia. Although the Complaint alleges minimal involvement by Mr. Rindner in most of those transactions, his limited role primarily is alleged to take the form of interacting with other Virginia-based AOL personnel. Where the Complaint alleges more substantive involvement by Mr. Rindner, such involvement occurred in the Eastern District of Virginia, as Mr. Rindner operated out of AOL headquarters throughout his employment with the company. Significantly, not a single act alleged by the SEC and attributed to Mr. Rindner occurred in the Southern District of New York.

Furthermore, here, there is a particularly strong “local interest in having the controversy decided in the district that is the principal locus of the transactions in question.” *Kelly*, 2 F. Supp. 2d at 441. AOL was founded in Northern Virginia and had its headquarters in the Eastern District of Virginia at all relevant times. When it was founded, AOL was at the forefront of the

¹¹ The same is true for the other defendants, with the exception of the 10 months Mr. Kelly worked in New York.

technology boom on the East Coast. It brought a significant number of jobs to the Northern Virginia area, and ultimately led the way to the development of the “Dulles Corridor,” which remains vital to Northern Virginia’s job market.¹²

On the other hand, AOL’s primary connection to New York is the recent transfer of its headquarters from Virginia to New York. Although AOL merged with Time Warner in 2001, AOL remained a subsidiary of AOLTW and continued independent operations in Dulles, Virginia. There is simply no basis for concluding that New York has genuine local interest in having this case – in particular the case against Mr. Rindner – especially when weighed against the interest in Northern Virginia. The locus of events and local interest weighs very heavily in favor of transfer.

4. Trial Efficiency and the Interest of Justice

In evaluating a § 1404(a) motion, “courts should also consider the ‘practical problems that would make the trial of a case easy, expeditious and inexpensive.’” *Dwyer*, 853 F. Supp. at 694 (quoting *Ryer v. Harrisburg Kohl Bros., Inc.*, 307 F. Supp. 276, 279 (S.D.N.Y. 1969)) (internal quotation marks omitted). These practical considerations also weigh strongly in favor of transferring this proceeding to the Eastern District of Virginia.

Transfer of the case to Virginia certainly would result in an expeditious resolution and lower litigation costs. As a threshold matter, the Eastern District of Virginia’s well known “rocket docket” ensures that discovery moves expeditiously, and that trials are rapid and

¹² Transferring Mr. Rindner’s case to the Eastern District of Virginia, which is the locus of all relevant facts pertaining to him, is also in the public interest. “To retain a case such as this which has no real nexus to New York would only serve to further delay adjudication of other cases brought by parties who are compelled to sue in the Southern District[.]” *Morales v. Naverias de Puerto Rico*, 713 F. Supp. 711, 713-14 (S.D.N.Y. 1994).

economical. *See generally* Carrie E. Johnson, *Rocket Dockets: Reducing Delay in Federal Civil Litigation*, 85 Cal. L. Rev. 225 (Jan. 1997).¹³

In a case such as this – involving multiple complex transactions – the rocket docket’s procedures will drastically reduce litigation costs. Discovery and trial both would be sharply abbreviated. Costs will be further reduced because counsel for the SEC and Mr. Rindner will not have to relocate to New York for trial, and many fewer witnesses will have to travel to testify.¹⁴

Of equal importance, the rocket docket is particularly appropriate for this action, given the SEC’s patent indolence in bringing the case. The SEC investigated these matters for nearly seven years before filing its Complaint, some two and a half years after notifying Mr. Rindner that it intended to sue him. The SEC then waited six weeks to serve the Complaint after it was filed, despite Mr. Rindner’s repeated offers to waive service of process. The SEC now is proposing a trial date in late 2010, some 10 years after most of the events in question, while at the same time claiming, among other things, that Mr. Rindner and the other defendants are threats to the investing public and should be prohibited from serving as officers or directors of public companies. Compl. at 54-55. The dark cloud of these baseless accusations, hanging over Mr. Rindner’s head for years, has been professionally detrimental and personally distressing. He seeks and deserves the most rapid trial date available, which the Eastern District of Virginia’s

¹³ In 2007, for civil cases in the Eastern District of Virginia for which jury trials were ultimately completed, the median time interval between filing and the start of trial was 8.2 months. *See Judicial Business of the United States Courts, 2007 Annual Report of the Director, James C. Duff* at 191. The median time interval between filing and disposition of civil cases by trial in the Eastern District of Virginia was 9.5 months for the same period. *Id.* at 175. In the Southern District of New York, the time intervals are 29 months and 25.7 months, respectively. *Id.* at 191, 175. Among federal district courts, the Eastern District of Virginia also has one of the lowest percentages of civil cases that have been pending for two years, and the lowest percentage of civil cases that have been pending for three or more years. *Id.* at 178-80.

¹⁴ Having fewer witnesses testifying by deposition will also enhance the presentation of evidence to the jury.

rocket docket has a well-deserved reputation for providing. It is thus practical and just to transfer this proceeding.

5. The SEC Is Not Entitled To Deference In Choosing This Forum

In general, “a plaintiff’s choice of forum is . . . entitled to substantial consideration.” *ZPC 2000*, 86 F. Supp. 2d at 280 (citing *In re Warrick*, 70 F.3d 736, 741 (2d Cir. 1995)) (internal quotation marks omitted). However, where the chosen forum “has no material connection” to the litigation, “this factor should be given little weight.” *Id.* (citing *Wechsler v. Macke Int’l Trade, Inc.*, 1999 WL 1261251, at *9 (S.D.N.Y. Dec. 27, 1999)) (internal quotation marks omitted); *see also Rubinstein*, 48 F. Supp. 2d at 325 (“This deference is entitled to less consideration where, as here, the forum chosen has no substantive ties to the litigation.”) (citing *Am. Marketing Enters., Inc. v. Sun Apparel, Inc.*, 1997 WL 47813, at *3 (S.D.N.Y. Feb. 6, 1997)). In addition, where, as here, a party selects a forum as a result of naked forum shopping, the deference should receive even less weight. *See generally Iragorri v. United Technologies Corp.*, 274 F.3d 65, 72 (2d Cir. 2001) (“the more it appears that plaintiff’s choice of a U.S. forum was motivated by forum-shopping reasons . . . the less deference the plaintiff’s choice commands”).

Because the SEC’s allegations against Mr. Rindner have no substantive tie whatsoever to the Southern District of New York, but are designed to avoid more logical jurisdictions where the SEC suffered embarrassing defeats, there is no reason to defer to the SEC’s choice of forum here. Likewise, the Southern District of New York has no material connection to the litigation, as every salient fact – the locus of events, parties, and witnesses – all make clear that the Eastern

District of Virginia is the most appropriate forum. The SEC's decision to file this case in the Southern District of New York should receive no deference.¹⁵

C. The claims against Mr. Rindner should be severed to facilitate transfer

To the extent necessary to facilitate the transfer of this case to a more appropriate venue, Mr. Rindner's case should be severed from the case against the other defendants. In deciding whether severance is appropriate, courts consider whether (1) the issues related to the claims against each defendant significantly differ from one another; (2) those separable issues would require different evidence or testimony; (3) the party opposing severance would be prejudiced if it is granted; and (4) the party requesting severance will be prejudiced if it is not granted. *SEC v. Pignatiello*, 1998 U.S. Dist. LEXIS 8297, *8-*9 (S.D.N.Y. 1998); Fed. R. Civ. P. 21. In this case, given the minimal overlap between the allegations against Mr. Rindner and the other defendants, and the vastly different role Mr. Rinder is alleged to have played in the deals, all four factors weigh in favor of severing Mr. Rindner's case, as may be necessary to facilitate a change of venue.

1. The issues related to the claims against Mr. Rindner differ from the issues related to the claims against the other defendants and thus would require different evidence and testimony

As an initial matter, there is minimal overlap between the allegations against Mr. Rindner and the allegations against the other defendants. For most of the transactions in the Complaint, the SEC either barely mentions Mr. Rindner or does not mention him at all. The Complaint does

¹⁵ The remaining two factors – each forum's familiarity with governing law, and the location of relevant documents and access to proof – do not weigh against transfer and are, at most, neutral. Because the relevant law is federal securities law, neither the Southern District of New York nor the Eastern District of Virginia is presumed to have "any greater familiarity" with the governing law than the other. *Rubinstein*, 48 F. Supp. 2d at 325. In addition, although documents related to the transactions at issue here were primarily created in Virginia, it is likely in today's environment that most, if not all, of them are stored electronically. In any event, the location of documents is "hardly a weighty factor." *United States v. Clark*, 360 F. Supp. 936, 943-44 (S.D.N.Y. 1973).

not reference Mr. Rindner in connection with the Sun transaction. It scarcely includes him in discussing the Wembley/Ticketmaster, Veritas, Bertelsmann, and HP deals. Indeed, for the Wembley/Ticketmaster, Veritas, and HP transactions, it alleges no contemporaneous involvement by Mr. Rindner, and for those transactions and Bertelsmann, it fails to allege that Mr. Rindner was aware of any flaws in the underlying accounting. Nor does the SEC suggest that Mr. Rindner played any role in negotiating or structuring those deals, or determining how revenue should be recorded. *See Compl.* ¶¶ 78, 93, 142-143, 154. In short, the skeletal allegations against Mr. Rindner make it abundantly clear that the SEC cannot, and will not, seriously attempt to establish liability against him based on these transactions.¹⁶

Although the allegations regarding the Telefonica transaction are more detailed, the SEC levies no allegations against any other defendant in connection with that deal. *See Compl.* ¶¶ 98-110. Accordingly, for the transactions associated with seven of the eight counterparties identified in the case, the overlap is negligible or non-existent.

Transactions with only one counterparty – WorldCom – form the bases for the SEC's claims against both Mr. Rindner and the other defendants. *See Compl.* ¶¶ 158-180. Yet the SEC's claims against Mr. Rindner in connection with WorldCom differ dramatically from its claims against the other defendants. Whereas Mr. Rindner allegedly participated in limited discussions with WorldCom and helped structure the deal, the other defendants allegedly approved the accounting for it. *See, e.g.* Compl. ¶¶ 163-66. The Complaint does not allege that Mr. Rindner participated in meetings or conversations with any other defendant in connection

¹⁶ As will be further explained in Mr. Rindner's forthcoming Motion To Dismiss The Complaint, most of these transactions also took place outside the applicable limitations period, and the SEC does not even attempt to plead the elements of the applicable causes of action against Mr. Rindner in connection with these deals. Accordingly, it is highly unlikely that the SEC can or will seek liability against Mr. Rindner in connection with them.

with WorldCom, and does not suggest that there will be substantial witness or evidentiary overlap between Mr. Rindner and the other Defendants.

Indeed, that lack of overlap strongly reflects the decided difference between Mr. Rindner's position at AOL, and the positions of the other defendants. Mr. Rindner, as a mid-level member of the Business Affairs unit, is alleged to have been involved from the perspective of negotiating and executing the deals. He thus is alleged to have managed the Business Affairs "pipeline," participated in a few advertising decisions, and discussed with WorldCom and Telefonica discrete portions of their agreements with AOL. *See, e.g.*, Compl. ¶¶ 103, 105, 106, 166, 174. The other defendants allegedly were company executives. They are alleged to have set revenue targets, made accounting decisions, and communicated with auditors and the public. *See, e.g.*, Compl. ¶¶ 55, 58, 60, 66, 72, 76, 79, 80, 84, 88, 90, 95, 118, 128, 129, 132, 133, 134, 137, 151, 163, 165, 175. None is alleged to have been in the Business Affairs unit, regularly engaged in discussions with deal counterparties, or played any role in the advertising component of these transactions.

Given the scant overlap in transactions between Mr. Rindner and the other Defendants, and the starkly different roles that Mr. Rindner and the other defendants allegedly played in the deals, severing Mr. Rindner's case would result in little cumulative evidence or testimony. To the contrary, including Mr. Rindner would result in two radically different and disjointed trials compressed into a single marathon proceeding: one trial involving Mr. Rindner, Telefonica, and WorldCom that focuses on the role of Business Affairs, and a second trial involving Sun, Veritas, HP, Wembley/Ticketmaster, BAG and WorldCom that focuses on the role of management. Accordingly, the first two factors – whether the issues related to each defendant significantly differ from one another and whether those separable issues would require different

evidence or testimony – weigh strongly in favor of severance. *See Corporan v. Binghamton*, 2006 U.S. Dist. LEXIS 74963, at *12 (few ties between separate incidences weighs in favor of severance).

2. The SEC will experience no prejudice if severance is granted, but Mr. Rindner will be prejudiced if the case against him is not severed

The remaining two factors also weigh in favor of severance. The SEC will experience no significant prejudice if severance is granted: there is little overlap between the allegations against Mr. Rindner and the other defendants, the evidence against Mr. Rindner would differ substantially from that used against the other defendants, and the SEC and its lawyers are based in or around the Eastern District of Virginia. *See Pignatiello*, 1998 U.S. Dist. 8297, at *11. By the same token, compelling Mr. Rindner to litigate in the Southern District of New York would likely substantially prejudice him. As set forth above, Mr. Rindner’s key witnesses cannot be compelled to testify in the Southern District of New York and some would not voluntarily appear there, the Southern District of New York is far from the locus of operative events, and forcing Mr. Rindner to attend a three month trial in the Southern District of New York would create both personal and professional hardship.

In addition, Mr. Rindner would be compelled to attend a lengthy trial involving substantial numbers of transactions in which he was not materially involved, dozens of witnesses who will not mention his name, and hundreds of exhibits that do not pertain to him. That would create a genuine likelihood of juror confusion and the strong possibility of spill-over prejudice based on evidence presented against other Defendants. *See Corporan*, 2006 U.S. Dist. LEXIS 74963, at *13-*14; *see also Zafiro v. United States*, 506 U.S. 534, 539 (1993) (“When many defendants are tried together in a complex case and they have significantly different degrees of culpability, the risk of prejudice is heightened.”). The sole means of alleviating that prejudice,

and ensuring that the case presented is one that actually relates to Mr. Rindner, is to sever his case. Because all four relevant factors weigh in favor of severance, Mr. Rindner's case should be transferred to the Eastern District of Virginia.

CONCLUSION

The majority of the factors – including the most important factors – that courts consider in determining whether to transfer a proceeding overwhelmingly weigh in favor of transfer. Taken as a whole, the SEC's case is connected to the Southern District of New York by only the finest of threads, and to the Eastern District of Virginia by every measurable fact. In addition, the minimal overlap in the allegations against Mr. Rindner and the other defendants demonstrates that severing his case to facilitate transfer is appropriate. Accordingly, Mr. Rindner respectfully requests that this Court transfer Mr. Rindner's case to the United States District Court for the Eastern District of Virginia.

Respectfully submitted,

/s/ Jonathan C. Drimmer _____
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Jonathan C. Drimmer
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1330 Connecticut Avenue, N.W.
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Counsel for Steven Rindner

Dated: August 28, 2008

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**Index of Exhibits to
Defendant Steven Rindner's Motion to Transfer Venue
*SEC v. Kelly, No. 08 Civ. 04612 (SWK)***

1. Cover pages of Section 21(a) Reports filed by American Online, Inc.
2. AOL Business Affairs/Corp Dev Department Phone List, dated Dec. 4, 2000
3. E-mail from S. Rindner to J. Patti, dated Jan. 17, 2001
4. AOL Business Affairs and Development Office Phone Numbers, Locations, dated Jul. 18, 2001
5. E-mail from J. Tyeryar to E. Prince, S. Rindner, dated Dec. 14, 2001
6. E-mail from S. Rindner to E. Keller, G. Rigdon, D. Dunbar, dated Feb. 2, 2002
7. E-mail from S. Rindner to V. Harker, dated Nov. 21, 2001
8. Instant Message exchange, dated Dec. 7, 2000
9. SEC's Notice of Designation of Related Civil Cases, filed March 21, 2005 in *SEC v. Time Warner, Inc.*, No. 05-0578
10. Excerpts from Prince Dep. 145:14-157:9, *In re AOL Time Warner, Inc. Sec. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Aug. 31, 2006
11. Memorandum to AOL Investigation Files from Eddie Paul, Nov. 6, 2002 ("Telefonica DataCorp., S.A.U. (Telefonica) December 2000 Agreements as to When Fair Value of Advertising Sold Under Umbrella Advertising Agreements Should Be Evaluated")
12. Excerpts from Wovsaniker Dep. 36:5-37:6, *In re AOL Time Warner, Inc. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jul. 24, 2006
13. Excerpts from Kelly Dep. 29:13-32:14, *In re AOL Time Warner, Inc. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jul. 26, 2006
14. Excerpts from Beams Dep. 11:16-12:3, 12:22-13:2, *In re AOL Time Warner, Inc. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jun. 15, 2006
15. Excerpts from Hurst Dep. 22:19-25, *In re AOL Time Warner, Inc. & "ERISA" Shareholder Litig.*, MDL Docket No. 1500, 02 Civ. 5575 (SWK), Jul. 11, 2006
16. Excerpts from Colburn Testimony 191:14-23, 193:9-10, *In re AOL Time Warner*, No. HO-9249, Apr. 25, 2007

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September 23, 2002

HAND DELIVERED

Gregory T. Lawrence, Esquire
United States Securities & Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: In the Matter of AOL Time Warner Inc., No. HO-9429

Dear Mr. Lawrence:

Enclosed is an interim report by AOL Time Warner Inc. ("AOLTW") reporting on America Online, Inc.'s ("AOL") transactions with Homestore.com, submitted in response to the Securities and Exchange Commission's (the "Commission") Order under Section 21(a) of the Securities Exchange Act of 1934, dated August 13, 2002, as modified by the August 28, 2002 letter from the Commission's staff (collectively, the "Order"), directing that AOLTW file a statement in writing, under oath, as to the facts and circumstances concerning certain indicated matters ("Requests").

There are several matters to bring to your attention: First, since AOLTW has already given you the addresses of most of the AOL employees who are identified in the transaction summaries, we have not included those again in the report. If you need an additional address, just let me know and I will get it for you. Second, because the SEC's investigation of Homestore.com only covered the time period after January 1, 2001, the detail presently available for transactions between AOL and Homestore during earlier years is somewhat less – although, as you will see, still quite substantial. Third, AOLTW has made every effort to provide the accompanying information in as comprehensive manner as possible, consistent with

Confidential Treatment Requested Under 17 C.F.R. § 200.83
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REQUESTED

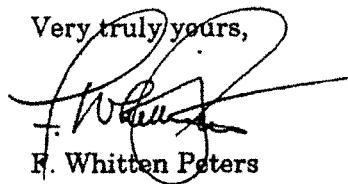
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Gregory T. Lawrence, Esquire
September 23, 2002
Page 2

previously discussed time limitations and other constraints, and will continue to work with the Commission to address any concerns about this or any other matter.

AOLTW requests that this letter and the enclosed documents be given confidential treatment pursuant to Commission Rule 83 (17 C.F.R. § 200.83).

Very truly yours,



F. Whitten Peters

6AOL001570002
CONFIDENTIAL TREATMENT
REQUESTED

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October 23, 2002

HAND DELIVERED

Gregory T. Lawrence, Esquire
United States Securities & Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: In the Matter of AOL Time Warner Inc., No. HO-9429

Dear Mr. Lawrence:

Enclosed is an interim report by AOL Time Warner Inc. ("AOLTW") reporting on certain of America Online, Inc.'s ("AOL") transactions, submitted in response to the Securities and Exchange Commission's (the "Commission") Order under Section 21(a) of the Securities Exchange Act of 1934, dated August 13, 2002, as modified by the August 28, 2002 letter from the Commission's staff (collectively, the "Order"), directing that AOLTW file a statement in writing, under oath, as to the facts and circumstances concerning certain indicated matters ("Requests"). This report discusses two of the transactions that were initially described in a series of articles in the Washington Post - Telefonica's December 2000 agreements with AOL and eBay's advertising representative arrangement with AOL. This interim report describes all transactions of which we are aware between AOL and Telefonica, and therefore constitutes AOL's complete response to Section IX of the Order. As to eBay, this interim report focuses only on the transactions specifically identified in my letter to you of September 13, 2002, and does not attempt to provide a comprehensive description of AOL's other agreements with that party.

AOLTW has made every effort to provide the accompanying information in as comprehensive manner as possible, consistent with previously discussed time

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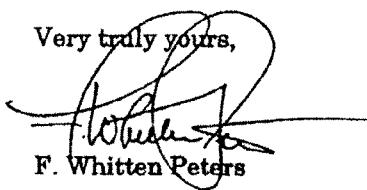
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Gregory T. Lawrence, Esquire
October 23, 2002
Page 2

limitations and other constraints, and will continue to work with the Commission to address any concerns about this or any other matter.

AOLTW requests that this letter and the enclosed documents be given confidential treatment pursuant to Commission Rule 83 (17 C.F.R. § 200.83).

Very truly yours,



F. Whitten Peters

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November 15, 2002

HAND DELIVERED

Gregory T. Lawrence, Esquire
 United States Securities & Exchange Commission
 450 5th Street, N.W.
 Washington, D.C. 20549

Re: In the Matter of AOL Time Warner Inc., No. HO-9429

Dear Mr. Lawrence:

Enclosed is an interim report by AOL Time Warner Inc. ("AOLTW") reporting on certain of America Online, Inc.'s ("AOL") transactions, submitted in response to the Securities and Exchange Commission's (the "Commission") Order under Section 21(a) of the Securities Exchange Act of 1934, dated August 13, 2002, as modified by the August 28, 2002 letter from the Commission's staff (collectively, the "Order"), directing that AOLTW file a statement in writing, under oath, as to the facts and circumstances concerning certain indicated matters ("Requests"). This report discusses the Ticketmaster (August 2000) and Wembley (September 2000) transactions that were initially described in a series of articles in the Washington Post. This interim report focuses only on the transactions specifically identified in my letter to you of September 13, 2002, and does not attempt to provide a comprehensive description of AOL's other agreements (if any) with Ticketmaster and Wembley. AOLTW has made every effort to provide the accompanying information in as comprehensive manner as possible, consistent with previously discussed time limitations and other constraints, and will continue to work with the Commission to address any concerns about this or any other matter.

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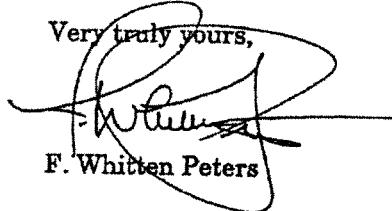
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Gregory T. Lawrence, Esquire
November 15, 2002
Page 2

AOLTW requests, pursuant to 17 C.F.R. § 200.83, that confidential treatment be accorded to this letter and to the enclosed report. AOLTW further requests that confidential treatment be accorded to any notes, memoranda, or other records created by or at the direction of the Commission, its officers or staff members, that reflect, refer or relate to this letter or the enclosed report.

Please promptly inform me, at the address and phone number listed above, of any request under the Freedom of Information Act seeking access to this letter or the enclosed report to enable us to substantiate the grounds for confidential treatment, unless the Commission intends to deny such request for access on other grounds.

Very truly yours,


F. Whitten Peters

Confidential Treatment Requested Under 17 C.F.R. § 200.83

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OF COUNSEL
 VINCENT J. MILLER
 RATHVON W. ARAGAM
 JEREMIAH C. COLLINS

November 22, 2002

HAND DELIVERED

Gregory T. Lawrence, Esquire
 United States Securities & Exchange Commission
 450 5th Street, N.W.
 Washington, D.C. 20549

Re: In the Matter of AOL Time Warner Inc., No. HO-9429

Dear Mr. Lawrence:

Enclosed is an interim report by AOL Time Warner Inc. ("AOLTW") reporting on certain of America Online, Inc.'s ("AOL") transactions, submitted in response to the Securities and Exchange Commission's (the "Commission") Order under Section 21(a) of the Securities Exchange Act of 1934, dated August 13, 2002, as modified by the August 28, 2002 letter from the Commission's staff (collectively, the "Order"), directing that AOLTW file a statement in writing, under oath, as to the facts and circumstances concerning certain indicated matters ("Requests"). This report discusses certain transactions between AOL and Veritas, Hewlett-Packard, and The Golf Channel. The enclosed report focuses on the transactions that were the subject of the restatement announced by AOLTW on October 23, 2002, and does not attempt to provide a comprehensive description of AOL's other agreements (if any) with those entities. AOLTW has made every effort to provide the accompanying information in as comprehensive manner as possible, consistent with previously discussed time limitations and other constraints, and will continue to work with the Commission to address any concerns about this or any other matter.

AOLTW requests, pursuant to 17 C.F.R. § 200.83, that confidential treatment be accorded to this letter and to the enclosed report. AOLTW further requests that confidential treatment be accorded to any notes, memoranda, or other records

Confidential Treatment Requested Under 17 C.F.R. § 200.83

2AOL05919 1600
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2AOL059191600

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Gregory T. Lawrence, Esquire
November 22, 2002
Page 2

created by or at the direction of the Commission, its officers or staff members, that reflect, refer or relate to this letter or the enclosed report. Please promptly inform me, at the address and phone number listed above, of any request under the Freedom of Information Act seeking access to this letter or the enclosed report to enable us to substantiate the grounds for confidential treatment, unless the Commission intends to deny such request for access on other grounds.

Very truly yours,

F. Whitten Peters, *sas*

F. Whitten Peters

Confidential Treatment Requested Under 17 C.F.R. § 200.83

2AOL05919 1601
Confidential Treatment
Requested

2AOL059191601

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OF COUNSEL
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November 27, 2002

HAND DELIVERED

Gregory T. Lawrence, Esquire
United States Securities & Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

Re: In the Matter of AOL Time Warner Inc., No. HO-9429

Dear Mr. Lawrence:

Enclosed is an interim report by AOL Time Warner Inc. ("AOLTW") reporting on certain of America Online, Inc.'s ("AOL") transactions, submitted in response to the Securities and Exchange Commission's (the "Commission") Order under Section 21(a) of the Securities Exchange Act of 1934, dated August 13, 2002, as modified by the August 28, 2002 letter from the Commission's staff (collectively, the "Order"), directing that AOLTW file a statement in writing, under oath, as to the facts and circumstances concerning certain indicated matters ("Requests"). This report discusses certain transactions between AOL and: Network Solutions Inc.; CareInsite, Inc.; NBA Media Ventures, LLC; WebMD; First USA VISA; Public Broadcasting Service; Circuit City Stores, Inc.; Target Corporation; TV Guide; Sony Pictures; Sesame Workshop; Blockbuster, Inc.; Hachette Filipacchi Magazines, Inc.; BigStep.com, Inc.; MCI Worldcom, Inc.; and Qwest Communications. The enclosed reports on MCI Worldcom, Inc. and Qwest Communications focus only on the transactions that were the subject of the restatement announced by AOLTW on October 23, 2002, and do not attempt to provide a comprehensive description of AOL's other agreements with those entities. AOLTW has made every effort to provide the accompanying information in as comprehensive manner as possible, consistent with previously discussed time limitations and other constraints, and

Confidential Treatment Requested Under 17 C.F.R. § 200.83

1AOL37102 1196
Confidential Treatment -
Requested

1AOL371021196

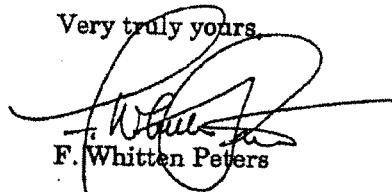
WILLIAMS & CONNOLLY LLP

Gregory T. Lawrence, Esquire
November 27, 2002
Page 2

will continue to work with the Commission to address any concerns about this or any other matter.

AOLTW requests, pursuant to 17 C.F.R. § 200.83, that confidential treatment be accorded to this letter and to the enclosed report. AOLTW further requests that confidential treatment be accorded to any notes, memoranda, or other records created by or at the direction of the Commission, its officers or staff members, that reflect, refer or relate to this letter or the enclosed report. Please promptly inform me, at the address and phone number listed above, of any request under the Freedom of Information Act seeking access to this letter or the enclosed report to enable us to substantiate the grounds for confidential treatment, unless the Commission intends to deny such request for access on other grounds.

Very truly yours,



F. Whitten Peters

Confidential Treatment Requested Under 17 C.F.R. § 200.83

1AOL37102 1197
Confidential Treatment -
Requested

1AOL371021197

DAVID POVICH
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December 13, 2002

BY FEDERAL EXPRESS

Gregory T. Lawrence, Esquire
 United States Securities & Exchange Commission
 450 5th Street, N.W.
 Washington, D.C. 20549

Re: In the Matter of AOL Time Warner Inc., No. HO-9429

Dear Mr. Lawrence:

Enclosed is an interim report by AOL Time Warner Inc. ("AOLTW") reporting on certain of America Online, Inc.'s ("AOL") transactions, submitted in response to the Securities and Exchange Commission's (the "Commission") Order under Section 21(a) of the Securities Exchange Act of 1934, dated August 13, 2002, as modified by the August 28, 2002 letter from the Commission's staff (collectively, the "Order"), directing that AOLTW file a statement in writing, under oath, as to the facts and circumstances concerning certain indicated matters ("Requests"). This report discusses certain transactions between AOL and Oxygen Media, Inc. and Bertelsmann A.G. AOLTW has made every effort to provide the accompanying information in as comprehensive manner as possible, consistent with previously discussed time limitations and other constraints, and will continue to work with the Commission to address any concerns about this or any other matter.

AOLTW requests, pursuant to 17 C.F.R. § 200.83, that confidential treatment be accorded to this letter and to the enclosed report. AOLTW further requests that confidential treatment be accorded to any notes, memoranda, or other records created by or at the direction of the Commission, its officers or staff members, that reflect, refer or relate to this letter or the enclosed report. Please promptly inform me, at the address and phone number listed above, of any request under the

Confidential Treatment Requested Under 17 C.F.R. § 200.83

2AOL08601 0056
 Confidential Treatment
 Requested

2AOL086010056

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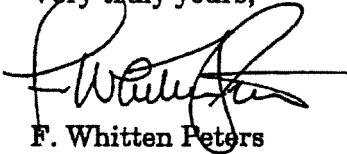
Gregory T. Lawrence, Esquire

December 13, 2002

Page 2

Freedom of Information Act seeking access to this letter or the enclosed report to enable us to substantiate the grounds for confidential treatment, unless the Commission intends to deny such request for access on other grounds.

Very truly yours,



F. Whitten Peters

2AOL08601 0057
Confidential Treatment
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OF COUNSEL
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February 28, 2003

HAND DELIVERED

Gregory T. Lawrence, Esquire
 United States Securities & Exchange Commission
 450 5th Street, N.W.
 Washington, D.C. 20549

Re: In the Matter of AOL Time Warner Inc., No. HO-9429

Dear Mr. Lawrence:

Enclosed is a report by AOL Time Warner Inc. ("AOLTW") reporting on certain matters relating to America Online, Inc. ("AOL"), submitted in response to the Securities and Exchange Commission's (the "Commission") Order under Section 21(a) of the Securities Exchange Act of 1934, dated August 13, 2002, as modified by the August 28, 2002 letter from the Commission's staff (collectively, the "Order"), directing that AOLTW file a statement in writing, under oath, as to the facts and circumstances concerning certain indicated matters ("Requests"). This report responds to Requests X through XV of the Order. Also enclosed are documents bearing bates numbers 13AOL002010001 through 13AOL002012873 that are referenced in this report. AOLTW has made every effort to provide the accompanying information in as comprehensive manner as possible, consistent with previously discussed time limitations and other constraints, and will continue to work with the Commission to address any concerns about this or any other matter.

AOLTW requests, pursuant to 17 C.F.R. § 200.83, that confidential treatment be accorded to this letter, the enclosed report, and the accompanying documents. AOLTW further requests that confidential treatment be accorded to any notes, memoranda, or other records created by or at the direction of the Commission, its officers, or staff members that reflect, refer, or relate to this letter, the enclosed

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2AOL05224 0880
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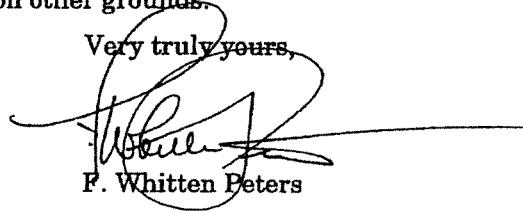
2AOL052240880

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Gregory T. Lawrence, Esquire
February 28, 2003
Page 2

report, or the accompanying documents. Please promptly inform me, at the address and phone number listed above, of any request under the Freedom of Information Act seeking access to this letter or the enclosed report or documents to enable us to substantiate the grounds for confidential treatment, unless the Commission intends to deny such request for access on other grounds.

Very truly yours,



F. Whitten Peters

Confidential Treatment Requested Under 17 C.F.R. § 200.83

2AOL05224 0881
Confidential Treatment
Requested

2AOL052240881

BUSINESS AFFAIRS/CORP DEV DEPARTMENT LIST

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 Dulles VA 20166
 HQ: 22000 AOL Way
 Dulles VA 20166

New York
 45 W. 18th Street
 New York, NY 10011

Netscape
 US Mail: 501 East Middlefield Road
 Mountain View CA 94043
 Shipping: 360 West Caribbean Drive
 Sunnyvale CA 94089

AOL Europe
 80 Hammersmith Road
 London UK W14 8UD

CompuServe
 5000 Arlington Centre Blvd
 Columbus OH 43220

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Mari Aspegren	+44 20 7348 8067	MaspegrenUK	AA to Tobias
Jnne Aubin	53830	JuneAubin00	AA for Edson
Mirza Baig	51130	MirzaBaig9	Sr Manager
Jennifer Baltimore	51843	JEBaltimore	Director
Jill Battisti	614 538 4327	JillBattisti	AA for Pete & Andy
Andrew Berman	650-937-2744	AJBerman1	Exec Director
Amy Borck	56197	AmyBorck	AA for Ron Grant & J Werther
Jennifer Botwright	51922	JenniferBot	AA for Joe & Lisa
Megan Brown	51159	MeganBrwn	Sr Analyst
Travis Brown	51593	TravisTBrown	Dirccotor
John Buchbinder	917 606 4644	JohnBuchbinder	Manager
Clay Buckley	53513	ClayBucky	Director
Carolyn Taylor	52998	Crcaylor	EA to Miles
Sabrina Cellarosi	52308	Scellarosi	Manager
Amanda Chamberlain	+44 207 348 8331	UKAmandaC	Temp AA for Lance
David Chen	51168	DavidChen1	Manager
Perry Chen	650-937-5623	PerryChen88	Content Analyst
Lynda Clarizio	51311	Clarilry	Sr Vice Prcsident
David Colburn	52365	DKRJJ	President
Lance Conn	(CC4) 56072		
Michele Erin Cox	+44 20 7348 8330 (UK)	LanceConn	Sr Vice President
Sean Daniels	53758	MicheleCox00	Temp AA for Angela & Travis
Tobias Dengel	212 206 4499	DanielsSJ	Sr Manager
Patricia Detweiler	+44 20 7348 8192 (UK)	TADengel	Vice President
Ken Dodelin	51970	TriciaSpeed	Manager
Michelle Dunne	51277	KenDodelin	Manager
Jim Eadic	51777	MichelleDunne	Database Specialist Intake
Jonathan Edson	56329	JimTEadic	Sr Analyst
Hope Elliott	52453	JREdson	Vice President
Julie Essman	650-937-6303	HopeElliott	Manager
Mark Feldman	56040	JulieEssman00	Temp AA to J Baltimore, D Liu
Mike Flecker	51888	MarkSFeldman	Manager
Mike Fogarty	56113	MichaelFlecker	Sr Manager
Brandon Fong	212-206-4554	FogartyMP	Director
Josh Freeman	56351	BrandonFong1	Sr Analyst
Alfred Garcia	52291	JoshLFreeman	Sr Manager
Miles Gilburne	650 937 4493	AlfredGarcia	Exec Director
Erin Gough	51258	ZGI	Corp Dev. Board of Directors
Ron Grant	56316	ErinGough00	Temp AA for Lynda & Ali
Evan Grayer	51031	RonEGrant	Sr Vice President
Vicki Green	TBD	EvanGrayer	Sr Manager
Andy Hackett	51123	Vgreen01	AA to J Lindsay and D Prieto
Navid Haghighi	614 538 4256	andyhackett	Manager
Andrew Haire	51964	Navid6	Sr Manager
Laura Hall	53457	AndrewHaire	Director
Paul "Skip" Hanke	51380	Lauraahall	Sr Analyst
Andie Harrelle	51453	PaulAHanke	Manager
Val Hawkins	52594	AHarrelle	AA for Ron, Jennifer, David
Dawn Hilderbrandt	+44 207 348 8279(UK)	Vphawkins	Manager, BA Wireless
Matthew Hong	51051	DHilderbrandt	AA for Ted Prince
Marisa Hughes	650 937 6690	MattHong650	Manager
Yolande Hughes	51184	marisahughes	Analyst
Gio Hunt	51883	Yolandeigh	AA for Eric's group
Joseph Jacob	650 937 5660	GioHunt	Vice President
Samara Jafse	55244	JosephJacob	Vice President
Ohad Jehassi	650 937 6278	SamaraJ	Sr Analyst
Linda Johnson	52136 (CC4)		
	53442	OhadJehassi	Manager
	650-937-2119	LJohnson720	Temp AA to Andy Berman

Christina Kakol	52818	Christinakakol	AA for Andrew Haire
Eric Keller	52024	ELKeller	Sr Vice President
John Kelly	650 937 2622	JohnKellyNSCP	Manager
Ruth Kirschner	917 606 4668 (NY)	RSKirschner	Sr Manager
Tracey Lakatos	415 844 9225 (SF)		
Sam Lam	212-606-4710	TraceyNY09	AA to Kent, Mike
Lisa Laudi	53322	SamuelCLam	Sr Analyst
Lori LaSpada	52374	LisaLandi1	AA for Corp Dev
Adam Lehman	51918	LoriLaSpada	Analyst
Jeff Lindsay	51236	AdamL	Sr Vice President
David Liu	53751	NOVOCAS	Exec Director
Angela Long	53296	DLiu8	Director
Jeff Lord	51237	AngelaMLong	Exec Director
Patricia Lougee	53075	JeffRLord	Sr Manager
Kim Luong	650 937 2743	Plougee	AA for BA West Coast
Trish Mast	51022	Kimilu2	AA for Adam
Aileen McConnell	56185	MastTrish	AA for Clay & Steve
Matt McConnell	54429	mcconnellaileen	Sr Manager
Esther McCullough	51413	mattmcconnell9	Director
Brian Murphy	55302	WriteEsther	Temp AA helping Margo
Tom Newman	53839	Murphola	Operations Manager
	56304	ThomNewman	Director
	917-606-4707 (NY)		
Erin Nguyen	650 937 3326	erinn@netscape.com	Manager
Larisa Nunley	53042	LANunley	Analyst
Andrea Orleans	51966	AndreaOrleans	Sr Manager
Pete Pajor	614 538 4618	Pajor	Director
Jim Patti	51889	JamesWPatti	Sr Manager
Debbie Pettersson	51862	Dpettersson	Office Manager
Indrajit Ponnambalam	56303	Iponnambalam	Sr Analyst
Sandy Pressley	917 606 4623	NYCBAAA	Temp AA for NYC
Dan Pricio	50106	Prictodan	Director
Ted Prince	50060	EdwardPrince	Exec Director
Jay Rappaport	51989	JayRapp	Sr Vice President
Srikanth Reddy	56354	srikanthreddy1	Sr Analyst
Greg Rigdon	51256	GregRigdon	Exec Director
Steven Rindner	52038	Srindner	Excc Director
Donna Roberts	650 937 6445	DonnaNSCP	Sr Manager
Joe Ruffolo	55370	JoeRuffolo1	Manager
Sherri Ruppert	52129	SherriHig	EA for David
Laura Quirk	50396	Lauraquirk00	Temp AA for Eric & Greg
Jonathan Salkoff	51955	jonathansalkoff	Manager
Steve Schroeder	51017	SteveSchroeder	Exec Director
Sarah Searls	50113	SearlsSara	Manager
Danny Shapiro	56110	DanielAShapiro	Analyst
David Shapiro	52298	DavidShapiro9	Sr Analyst
Akbar Sharfi	51498	AkbarSharfi	Manager
Robert Sirmans	51872	SirmansBob	Manager
Lisa Soltani	53684	LisaSolt	Exec Director
Veronica Soncav	53934	Vsoncav	Manager
Margo Stephen	53402	MargoStephen1	AA for Steve Schroeder
William Stoesser	50286	StoesserWC	Manager
Gabriel Stone	50118	GabStone	Manager
Greg Sugar	415-934-2816	Greg Sugar	Sr Manager
	Spinner, Inc., 375 Alabama St., Suite 350, San Francisco, CA 94110		
Jeff Sunshine	51415	JeffSunshine	Manager
Kelly Takeuchi	614 538 4328	KellyTakeuchi	AA for Alan
Tina Taylor	53567	Taylorc555	AA for Jay
Cyril Thottam	56380	CyrilThottam	Sr Analyst
Ann Tubbs	53314	VAAnn1	AA for Sherri/David
Jeff Tyeryar	50646	tyeryar	Sr Manager
Jake Vastine	650 937 2118	JakeVastinc	Manager
Kent Wakeford	212 206 4417	KDWakeford	Exec Director
Jon Werther	52103	JonWerther	Director
Jason Witt	415 844 9232	jsnwtt	Manager
Simone Wu	51820	SimoneWu	Director
Anne Wydler	53511	ABWydler	Sr Analyst
Tom Ziemba	206 343 7001	TFZiemba	Sr. Manager

Tegic Communications, 1000 Dexter Ave, N, Suite 300, Seattle, WA 98121

FAX #s**CC4**

BA Main Fax (45B:K02)	703 265 1206
45B C05 (near Angela Long's ofc)	703 265 4780
45A.B00	703 265 0672
Ron Grant's Group	703 265 0242
Adam Lehman's Group	703 265 4780
CC4 5th Floor Fax	703 265 0670
	703 265 0671

HQ

David Colburn	703 265 1202
Corp Dev	703-265-1103
M & A	703 265 2996
Pete Pajor Fax	614-457-9665
Alan Alford Fax	614-538-3365
West Coast BA Group	650-937-5444
NY Fax	212-206-4592
NY Fax (Tom Newman)	212-206-4595
NY Fax (Wakeford)	TBD

UK

Lance Conn & Tobias Dengel	+44.20.7348.8005
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MISC

Help Central	51911
Facilities Help Desk	53058
Operations Security	54040
Accounting Help Desk	51827
Gatehouse (Keys & Guests)	52320
Dulles Main #	703-265-1000
Reception (HQ)	52120
Reception (CC1)	52130
Reception (CC2)	52100
Reception (CC3)	52500
Reception (CC4)	50660
Marriott Catering	52322 (SN: Cafebrenda)
Garber Travel	51880
Copy Center	53160
Weather Line	703-265-1606
Mailroom (HQ)	52113
Mail room (CC4)	50663
Shipping (FedEx etc)	53255
Transfer to VM	81701
Retriece VM Messages	51701

Subj: **Re: Veritas Information**
Date: 1/17/01
To: JamesWPatti
BCC: wovsaniker/a

In a message dated 1/16/01 6:28:55 PM Eastern Standard Time, JamesWPatti writes:

<< Mark - we do not have an agreed-upon, baseline plan prior to signing, which occurred on 9/30. We do have an email trail of discussions between account services and Veritas that begin in early October and continue through the month (and to the present - as the relationship progresses).

The deal was struck with the understanding that we'd work on mutually agreeable carriage at pre-set, rate-card spending levels by quarter. The first ads launched on 10/15. Please see below for a list of all the iterations of the carriage plan by date. Revisions occur regularly on most deals as the client monitors the performance of the ads.

Jim Patti >>

Jim – You need to clean this up and take a second to think about the e-mails you send out. We are all aware that there was no carriage plan in place prior to signing the deal – it was a TBD at our discretion. Subsequently, I asked you to go back to Veritas and get them to agree to a carriage plan – plan properly valued and that made sense for them. All of which you confirmed for me had been done and sent to accounting with the "official package." Your e-mail above confuses issues. I want you to talk with AS and find out exactly the process that was used to gain their agreement on the carriage plan that was created and forwarded to them. Thanks. Steven

SER/AOLTW E0098

002S1AOL0070044481
Confidential Treatment Requested

AOL Business Affairs and Development
 Office Phone Numbers, Locations

Dulles Campus:	HQ: 22000 AOL Way Dulles VA 20166 CC: 22250 Pacific Blvd Dulles VA 20166	AOL - BA&D: 45 W 18th Street New York NY 10011 AOL TW: 75 Rockefeller Plaza New York NY 10019
CompuServe:	5000 Arlington Centre Blvd Columbus OH 43220	Spinner: 375 Alabama Street #350 San Francisco CA 94110
Netscape: (mailing)	466 Ellis Street Mountain View CA 94034 (shipping) 360 West Caribbean Drive Sunnyvale CA 94089	Tegic: 1000 Dexter Ave North, Suite 300 Seattle WA 98121
AOL Europe:	80 Hammersmith Road, Rm. 307 London UK W148TH	ICQ - Israel: Kiryat-Alidim Blag. #2, Tel Aviv Israel

Last Name	First Name	Phone	Screenname	Position	Location Group
Afford	Alan	614 538-4022	AAfford11@cs.com	Vice President	Columbus
Asghar	Ali	52489	Baasghar	Director	Afford
Aspgren	Mari	44 20 7348 8087	MaspgegenUK	AA: T Dergel	London
Aubin	June	53830	JuneAubin00	AA: J Edson	CC4
Ayers	John	53678	JohnayersC	Vice President	Edson
Baig	Mirza	51130	MirzaBaig9	Sr Manager	Clarizio
Bang	Michelle	212 484-7963	MichelleBang01	Sr Analyst	Rhoner
Battisti	Jill	614 538-4327	JillBattisti	AA: A Afford	Clarizio
Ben-Yoseph	Ohad	58722	OhadBA	Senior Analyst	Afford
Beerman	Andy	650 987 2744	AJBeerman1	Exec Director	Prince
Boesenberg	Alex	650 937 3138	AlaxBosen	Ex. Director	Edson
Boodosigh	Michael	212 484-7970	MBoodosigh1	Sr. Analyst	Hunt
Bowright	Jennifer	51922	JeniferBct	AA [Temp]	Min View
Brog	David	50294	DavidBrog	AA: J Jacob J Ruffolo	Min View
Brown	Claudette	51187	ClaudetteBrown00	Exec Director	Mandl
Brown	Travis	51533	TravisTBrown	AA [Temp]	Min View
Buckley	Clay	53513	ClayBucky	AA: T Brown [Temp]	Rinchner
Cellicosi	Sabrina	52308	Scellinosi	Exec Director	Lehman
Centers	Shannon	53758	ShannonCenters00	AA: L Conn	Min View
Chamberlain	Amanda	44 207 348 8331	UKAmandaC	Content Analyst	Rinchner
Chen	Perry	650 937 5623	PerryChen88	Exec Director	Lehman
Chen	Ted	650 937 2458	TedChen01	Sr Manager	Lehman
Clanzio	Lynda	51311	Clarily	Director	Hunt
Colburn	David	52365	DKRJU	Sr Vice President	Clarizio
Combs	Zanda	212 844 6840 (NY)	ZandiaCombs	President	Colburn
Conn	Lance	56741	ZandiaCombs	Manager	Prince
Daniels	Sean	44 20 7348 8330	LanceConn	Sr Vice President	Lehman
David (Btown)	Megan	212 206 2498	DanielsSJ	Sr Manager	Rinchner
Dekangelo	Ed	51159	MeganBrown	Sr Analyst	Edson
Dergel	Tobias	614 538 3217	EduDekangelo@cs.com	Sr Manager	Afford
Dodelin	Ken	50118	TADergel	Vice President	Lehman
Dunne	Michelle	51277	KenDodelin	Sr Manager	Edson
Eagle	Jim	51177	MichelleDunne	Database Specialist/Intake	Lehman
Edson	Jonathan	56329	JimTeade	Sr Analyst	Grant
		52453	JEdson	Vice President	Edson

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AOL Business Affairs and Development Office Phone Numbers, Locations			
Last Name	First Name	Surname	Phone
Ezzati-Cudjoe	Theresa	TheesaECOO	551956
Essman	Julie	JulieEzman00	550340
Fedorowitch	Sue Ellen	Fede	57826
Feldman	Mark	MarkSFeldman	51888
Flecker	Mike	MichaelFlecker	56113
Florentino	Sonia	SoniaFlorentino1	917 606 4709
Fogarty	Mike	FogartyMP	212 206 2554
Fong	Brandon	BrandonFong1	56351
Freeman	Josh	JoshLFreeman	52291
Frid	Izik	Izik@icq.com	972 3 766 5540
Garcia	Alfred	AlfredGarcia	650 937 4493
Gautier	Rachael	RachaelGautier	51184
Goss-Johns	Maisha	MaishaGossJohns	55787
Grant	Ron	RonEGrant	51C31
Grayer	Evan	EvanGrayer	212 506 2316
Green	Michael	MichaelGreenBA	56886
Gurion (Elliott)	Hope	HopeElliott	650 937 6303
Hackett	Andy	AndyHackett1	614 538 2556
Haghghi	David	David6	51964
Haire	Andrew	AndrewHaire	53457
Hall	Laura	Laurahall	51380
Hanke	Paul "Skip"	PaulAHanke	51453
Hawkins	Val	Val	44 21 07 348 8279
Hobbs	Daryl	Vphawkins	57381
Hong	Matthew	DHobbsBA	650 937 6690
Hunt	Gio	MathHong650	650 937 5680
Hurd	Joe	GioHunt	57765
Jacob	Joseph	JHurd3rd	55244
Jaffe	Samara	JosephJacob	52136
Johnson	Linda	SamaraJ	650 937 2119
Junowicz	Lior	LohinsonEA	212 464 6223
Kakol	Ain	Lunowicz	58494
Kakol	Christina	Annakakol00	52818
Kelly	John	Christinakakol	650 937 2622
Kien	Greta	JohnKellNSCP	53765
Kimberly	Dawn	GretaKiel1	51051
Knoll	Duffy	DawnKimberly1	58696
Lakatos	Tracey	DuffyKnollBA	917 606 4710
Lam	Sam	TraceyNY09	53322
Layne	Rane	SamuelCLam	212 494 7770
Liu	Lisa	RaneSelari	52374
Long	Lori	Lisalandri1	51918
Lord	Adam	LoriLaSpada	51236
Lougee	Paul	AdamL	56688
Luong	David	PaulLevineBA	55296
Mandel	Angela	Dluu8	51237
Marcus	Jeff	AngelaMLong	44 207 559 3426
Main	Patricia	JeffRLord	650 937 2743
Kim	Kim	Pleudgee	51022
Sam	Sam	Kimilu2	212 484 7974
Joy	Ken	Sammandel	212 484 7776
Ken	Ken	JMarcus03	TBA

Last Update: 7/18/01

Last Update: 7/18/01

AOL Business Affairs and Development
 Office Phone Numbers, Locations

Last Name	First Name	Phone	Screenname	Location	Position	Group
Marks	Lisa	57816	LisalMarks2	Macconnell@AOL.com	Manager	CC4 Prince
McConnell	Aileen	54429		Macconnell@AOL.com	Director	CC4 Grant
McConnell	Matt	51413		Mathmcconnell9	Director	CC4 Colburn
Meissels	Adrienne	650 937 2720		Ameisis	Director (iPlanet)	Hunt
Miller	Teri	59678		TerilynnM1	AA: CBuckley, DBrog, JHurd	Mfr View
Moses	Neil	57749		NeillMMoses	Manager	CC4 Rindner
Murphy	Brian	53839		Murchola	Sr Manager	CC4 Rindner
Newman	Tom	212 484 6182		ThomNeuman	Director	75 Rock Clarizio
Nguyen	Erin	650 937 3326		Ermn@netscape.com	Manager	Mfr View Hunt
Nordeen (Tubbs)	Ann	53314		Annhorddeen	AA: SRupper/DColburn	Colburn
Nunley	Larisa	55042		LA Nunley	Analyst	HQ Rindner
Oliveira	Alison	51955		AlisonOliveria1	Manager	CC4 Prince
Paior	Pete	61 4 538-4618		Pajoi@cs.com	Director	CC4 Alford
Pasidiski	Janet	58114		JanetPasidiski	AA: RWilson, Duffy Knoll	Columbus CC4 Prince
Petterson	Deb	51882		Dpettersson	Office Manager	CC4 Lehman
Ponnambalam	Indrajit	56303		Iponnambalam	Sr Analyst	CC4 Clarizio
Press	David	57728		Dl_Press9	Manager	CC4 Grant
Pressley	Sandy	212 484 6276		NYCBAAA	AA: T Newman, S Mandel	Mandel
Prince	Ted	50060		EdwardPrince	Vice President	CC4 Prince
Reddy	Srikant	56354		Srikantreddy1	Sr Analyst	CC4 Clarizio
Ricci	Pat	650 937 2652		Fricci@netescape.com	EA: West Coast Group [Temp]	Mfr View Hunt
Rigdon	Greg	51256		GregRigdon	Vice President	CC4 Rindner
Rindner	Sherry	52038		Sindher	Vice President	CC4 Rindner
Roberts	Steven	310 341 4697		DomnaNSCP	Sr Manager	Cukier City
Ruffolo	Donna	55370		JoeRuffolo1	Manager	CC4 Lehman
Rupert	Joe	52129		Sherr-Hig	EA for D Colburn	CC4 Colburn
Sammick	Sheri	212 484 7850		Jonathansammick	Director	HQ Grant
Schlarsky	Jonathan	50396		Racholschalsky	AA: Rigaon, Marin, IM	75 Rock
Schoeder	Rachel	51017		SteveSchroeder	Exec Director	CC4 Edson
Searls	Steve	50113		SearlsSara	Sr Manager	CC4 Rindner
Shapiro	Sarah	56110		DanielAShapiro	Sr Analyst	CC4 Edson
Shapiro	Danny	52298		DavidShapiro8	Manager	CC4 Lehman
Shaffi	David	51498		AbbarShaffi	Sr Manager	CC4 Edson
Shuda	Abtar	56313		Laurashudado	AA (Temp) - M&A	CC4 Clarizio
Sichel	Laura	52115		Jsiceli1	Vice President	CC4 Grant
Snyder	Jon	614 538 3820		Domnasnyder	AA: P Pajoi, A Hackett	Columbus
Sonsen	Donna	53834		Vaconsey	Sr. Manager	CC4 Alford
Stephan	Veronika	53402		MargoStephan1	AA: Content Group	CC4 Prince
Stewart	Margo	212 484 7961		MatthewStewart00	AA: ISamnick, 75 Rock Team	75 Rock
Stoesser	Matthew	50286		SpoessensWC	Manager	CC4 Lehman
Stone	William	212 484 7364		GabStone	Sr Manager	75 Rock
Su	Gabriel	53624		JingSuba	Sr Analyst	CC4 Rindner
Sugar	Jing	415 934 2816		Greg Sugar	Director	San Fran
Sunshine	Greg	51415		JeffSunshine	Sr Manager	HQ
Tynerar	Jeff	50646		Tynerar	Sr Manager	CC4 Prince
Underwood	John	59697		JUnderwoodBA	Manager	CC4 Rindner
van Straaten	Derek	917 606 4749		vanStraatenD	Sr Analyst	45 W 18th
Vastine	Jake	650 937 2118		JakeVastine	Manager	Mfr View
Vogt	Jeff	56195		JSVogt	Sr Analyst	CC4 Prince
Wakeford	Kent	212 206 4417		KDWakeford	Exec Director	45 W 18th
Werther	Jon	52103		JonWerther	Exec Director	CC4 Grant
Wilsey	Jeff	53077		Jewilsey	Sr Manager	CC4 Rindner

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AOL Business Affairs and Development
 Office Phone Numbers, Locations

Last Name	First	Phone	Screen Name	Position	Location	Group
Wilson	Rusty	53655	RwilsonBA	Exec Director	CC4	Prince
Witt	Jason		Jennett	Sr Manager	CC4	Rincher
Wyder	Anne	442075593458	ABWycoder	Manager	London	Grant
Yang	Vivian	2124847870	VWYang	Director	75 Rock	Mandel
Zaretsky	Jeff	6509372602	ZaretskyJeff	Manager (PPlanet)	Mtn View	Hunt
Ziemba	Tom	54595	TFZiemba	Director	CC4	Prince
Zinda	Christine	55748	ChristineZIndia	EA: R Grant, J Wether	CC4	Grant
SUMMER INTERNS						
Kwan	Kate	2124847872	KatieKwan1	Intern/Analyst	NYC	Carizzo/Grant
Liebsohn	Adam	517356	AdamLeibsohn	Intern/Analyst	CC4	Lehman
Rigdon	Mark	6509372613	RigdonMark	Intern/Analyst	Mtn View	Hunt
Stofko	Peter	6145384661	PeteStofko1	Intern/Analyst	Columbus	Alford
FAX NUMBERS						
B&D Main Fax (455)402)		703 255 1206	Accounting Help Desk			51227
45A-B00		703 285 0672	AOL New Business Hotline (Intake)			51220
45B-C05		703 285 4780	AOL Convenience Store (CC1)			53211
CC4-5th Floor Fax		703 285 0670	Badging Office			51462
CC5-5th Floor Fax		703 285 0671	Catering - Marriott (SN: CafeBrenda)			52922
Adam Lehman		703 285 4949	Corporate Express	600 238 6329		800 336 4753
Ron Grant's Group		703 285 0242	Courier Service (via Corp Express -- Acc# 8386)			53058
David Coburn - Dulles HQ		703 285 1202	Facilities Help Desk (SN: FacilityHelp)			51880
David Coburn - 75 Rock		212 258 3068	Garter Travel			52320
Investments & Acquisitions		703 285 2996	Gatehouse			51968
Investments & Acquisitions		703 285 5636	HR Direct			51911
Alan Alford - CompuServe		614 538 3365	IC Help Desk			53154
Pete Pajor - CompuServe		614 487 9865	IKON Office			53636
Gio Hunt - Netscape		650 937 5444	Les Concierges	Warren Mahan (Mgr)		51356
NY - 45 W 18th St		212 206 4592	Mailroom - HQ	Mary Goff (Mgr)		50298
NY - 45 W 18th St		212 206 4595		(SN: LesCon22)		52113
NY - 75 Rockefeller		212 405 5212				53195
London		44 20 7348 8005	Mailroom - CC1			50663
Meeting Place/Call-in Numbers						
Call In Number	Internal	Toll Free	Main # - Dules			51000
703-265-5000	56000	877 708 6777	Reception (HQ)			52120
703-265-5001	55001	877 708 6770	Reception (CC1)			52130
703-265-5002	55002	877 708 6771	Reception (CC2)			52100
703-265-4963	54963	877 313 3725	Reception (CC3)			52500
			Reception (CC4)			50690
			Reception (CC5)			56000
			Security (SN: AOL Security)			54357 (5-HELP)
			Security/Operations (SN: OpsSec)			54040
			Shipping/Receiving - Fed Ex, etc			33254
			Taxi - Dules			703 481 8181
			Voice Mail - Retrieve messages			703 661 8230
			Voice Mail - Transfer to Weather Line			51731
						81701
						51606

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Subj: **Fwd: Potential New HP Ad Revenue \$\$\$\$**
 Date: 12/14/01 9:25:38 AM Eastern Standard Time
 From: Tyeryar
 To: EdwardPrince, Srindner
 File: **IDCUNIXReport.htm** (45815 bytes) DL Time (TCP/IP): < 1 minute
 Sent on: AOL 6.0 for Windows US sub 10553

Key Points:

1. Ops wants to do an HP deal but would like to wait for outcome of HP/Compaq merger before committing. If a deal is done before the merger outcome is known, it will be small - less than \$50M (down from last deal of \$200M), because Ops is dangerously overcommitted on their spend. HP would obviously like to force a deal pre-merger, so that they can claim both the HP and Compaq commitments post merger.
2. If we can do a deal after the HP/Compaq merger (assuming it closes), we have an opportunity to wipe out the Compaq commitment and do one larger deal for the unified company.
3. We have an existing partner marketing deal with HP that Paul Ewert has told me they're generally happy with . . . so incorporating it into a new GA is simply moving paper unless we achieve a significantly better PM deal.
4. In the past deal, we traded discounts back to fund ads - i.e., HP has never in an Ops deal has never done an ad deal based on real value. I'd like to change that, through Share Shift, and get Ops their negotiated discounts back.

Forward Verified: Fri Dec 14 11:04:14 2001

Subj: **Fwd: Potential New HP Ad Revenue \$\$\$\$**
 Date: 12/14/01 8:45:12 AM Eastern Standard Time
 From: EdwardPrince
 To: Srindner, Tyeryar
 Sent on: AOL 7.0 for Windows US sub 118

fyi

Forward Verified: Fri Dec 14 11:04:14 2001

Subj: **Fwd: Potential New HP Ad Revenue \$\$\$\$**
 Date: 12/14/01 8:18:40 AM Eastern Standard Time
 From: RayIIN
 To: EdwardPrince
 Sent on: AOL 7.0 for Windows US sub 118

FYI,
 Ray

Forward Verified: Fri Dec 14 11:04:14 2001

Subj: **Potential New HP Ad Revenue \$\$\$\$**
 Date: 12/14/01 12:13:33 AM Eastern Standard Time
 From: rich_place@hp.com
 To: korn@aol.com
 CC: rayiin@aol.com, labertj@aol.com, barrettjg@aol.com, dlcoleops@aol.com, ann_livermore@hp.com, sebastiano_teveratto@hp.com, scott_mcninch@hp.com
Sent from the Internet (Details)

Matt,

As this fiscal year comes to a close HP will be one of many potential General Agreements that come up for review. We expect our proposal to AOL TW to be made by mid-January and I hope that HP will have the opportunity to present what I believe is a very strong value proposition for AOL TW.

As you know the HP General Agreement (GA) with AOL expires this December. We are currently working to restructure the GA and have broad HP executive support for this new GA with AOL. The new GA will cover:

1. Significant Advertising Revenue
2. AOL Subscriber Revenue
3. Software Licensing Fees
4. Alliance and Partnership Opportunities

HP continues to be the #1 Home PC and Printer company in the marketplace as measured by IDC. In the latest financial report HP stated "Home PC revenues increased 23% sequentially" and "HP retained its leading position in home PCs". This has enabled HP over the last 3 years to generate year-over-year new subscriber revenue of over \$300M for AOL. HP's focus and new products for home appliances and networking would allow AOL and HP to collaborate in new ways and generate new revenue streams for AOL TW for their existing music and video content.

AOL continues to be a valued customer of HP's and we thank you for your business. HP continues to have broad acceptance and success with our Unix and storage products in the marketplace. I have attached the press release that shows the IDC data that HP is the leader in high-end and midrange Unix systems and is the only computer company to grow Unix revenue quarter to quarter. D.H. Brown has ranked HP #1 among total storage providers and Gartner Group says "Hewlett-Packard's (HP's) XP-512 is architecturally the most advanced storage subsystem available. The breakthrough design promises large capacity, excellent availability and leadership in throughput".

I will call your assistance to schedule some time so that we can review the outline of the General Agreement.

Best regards,
Richard Place
Account General Manager - AOL Time Warner
703-204-2529 office
703-244-7093 cell

Tuesday, January 14, 2003 America Online: daticon07

018S1AOL0070057113
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Subj: **Fwd: AOL and Wembley**
 Date: 2/01 9:48:14 AM Eastern Standard Time
 From: Srindner
 To: ELKeller
 CC: GregRigdon, DianaDun
 Sent on: AOL 5.0 for Windows sub 116

In a message dated 1/30/01 9:30:28 PM Eastern Standard Time, ELKeller writes:

<< This has to be a cruel joke --- just confirm that this has been fixed. >>

Eric, Greg is working on this and will call the folks at Wembley to see exactly what they are asking for/issue here.
 Steven

Forward Verified: Fri Feb 2 18:19:46 2001

Subj: **Fwd: AOL and Wembley**
 Date: 1/30/01 9:30:28 PM Eastern Standard Time
 From: ELKeller
 To: Srindner, GregRigdon
 CC: DianaDun

Sent on: AOL 5.0 for Windows sub 103

This has to be a cruel joke --- just confirm that this has been fixed.

Forward Verified: Fri Feb 2 18:19:46 2001

Subj: **Fwd: AOL and Wembley**
 Date: 1/30/01 5:56:11 PM Eastern Standard Time
 From: DougNeillLA
 To: ELKeller
 CC: DianaDun

Sent on: 6.0 sub 10501

Eric-

I had been working with Jim Patti on the implementation of the settlement with Wembley.com. As you may know, the deal was that we would run 1 billion impressions and then recognize revenue (\$20+MM) - which was done before the end of the year. We were instructed to run the campaign without any input from Wembley as they were not ready to begin anything yet and we needed to have the impressions run by year end - i.e., we created the art and linked to dummy pages.

Wembley is now contacting us to begin their campaign. All of their impressions have run. How should we respond?

Thanks,
 Doug

Doug Neil
 Director, Account Services
 310/841-4731
 DougNeillLA@aol.com

Forward Verified: Fri Feb 2 18:19:46 2001

Subj: **AOL and Wembley**

Date: 1/30/01 11:17:38 AM Eastern Standard Time

From: George.Georgiou@wembley.co.uk (George Georgiou)
 To: DougNeilLA@aol.com (Doug Neil (E-mail)), DCKuchem@aol.com (Dana Kuchem (E-mail))

Hi Doug, Dana,

Hope you are keeping well.

Following on from our initial conversation late last year, we are in a position to move forward with the planning and fulfilment of the impressions campaign. We can arrange another conference call if you so wish - please feel free to suggest a day and time.

Look forward to hearing from you soon.

Regards
 George
 George Georgiou
 Sales & Marketing Manager
 24dogs
 Wembley plc
 Elvin House,
 Stadium Way,
 Wembley,
 Middlesex
 HA9 0DW
 T: +44 (020) 8585 3909
 F: +44 (020) 8903 8285
www.24dogs.com

Map Reference:
<http://www.streetmap.co.uk/streetmap.dll?P2M?P=HA90DW&Z=1>

----- Headers -----

Return-Path: <George.Georgiou@wembley.co.uk>
 Received: from rly-yd01.mx.aol.com (rly-yd01.mail.aol.com [172.18.150.1]) by air-yd03.mail.aol.com (v77.31) with ESMTP; Tue, 30 Jan 2001 11:17:38 -0500
 Received: from stalker1.atlas.net.uk (stalker1.atlas.net.uk [195.54.226.7]) by rly-yd01.mx.aol.com (v77.27) with ESMTP; Tue, 30 Jan 2001 11:17:22 -0500
 Received: from email.wembley (email.wembley.co.uk [195.54.238.18])
 by stalker1.atlas.net.uk (8.11.2/8.11.2) with ESMTP id f0UGFfk17167;
 Tue, 30 Jan 2001 16:15:41 GMT
 Received: by email.wembley with Internet Mail Service (5.5.2650.21)
 id <D7QV0DCP>; Tue, 30 Jan 2001 16:16:46 -0000
 Message-ID: <6CCAADF5D660D411A83E00508B5532F8757F6B@email.wembley>
 From: George Georgiou <George.Georgiou@wembley.co.uk>
 To: "Doug Neil (E-mail)" <DougNeilLA@aol.com>,
 "Dana Kuchem (E-mail)"
 <DCKuchem@aol.com>
 Subject: AOL and Wembley
 Date: Tue, 30 Jan 2001 16:14:51 -0000
 MIME-Version: 1.0
 X-Mailer: Internet Mail Service (5.5.2650.21)
 Content-Type: text/plain;
 charset="iso-8859-1"

Subj:	Fwd: AOL Issues
Date:	11/21/01
To:	victoria.harker@wcom.com
CC:	edwardprince/a , andrewshire/a
BCC:	dkrjj1/a , junderwoodba/a

Victoria,

I am glad we had the chance to talk this afternoon. Here is the note we discussed just confirming our conversation. I look forward to exchanging signatures on Monday. Thanks again and hope you have a happy Thanksgiving weekend. Steven

We will run \$8.5mm of AOL carriage this Q according to a plan that provides WCom/MCI placements that are comparable to placements that we have run for WCom/MCI on AOL previously. Of course, we will continue to work with your marketing group to run a plan that reflects their latest input.

In Q1 (with respect to the remaining \$8.5mm of the \$17mm), we will allocate \$6mm on AOL and \$2.5mm on Turner and Time Warner Cable. With respect to the online component for Q1 and going forward, we will work with your team to finalize a carriage plan. If we do not get final online carriage plans from WCom/MCI within 30-days before the end of a quarter, then again we will only run a carriage plan, limited to the online component, that is comparable to the placements agreed upon in previous quarters by WCom/MCI. For the offline component, we will always only run media placements that are agreed upon by you.

As to payments, the media will be paid for following the \$17mm payment that we are making to you on the network agreement. (Media due on 1/31/01 and Network due on 1/15/01.)

With respect your second point in your note to me, I agree that David and Scott need to discuss this, and I will arrange for them to talk.

Subj:	Re: Telefónica
Date:	12/7/00
To:	Briheller, KLitsinger
CC:	Joshwresnik

In a message dated 12/7/00 10:01:14 AM Eastern Standard Time, Briheller writes:

<< Congrats to Josh for a great job under the gun.

Briheller [9:52 AM]: i see a telefonica banner on e-mail. it links to a web page that says nothing but "telefonica" in the middle of the page. no graphics, no links, no nuthin!

Briheller [9:53 AM]: Telefónica

Briheller [9:53 AM]: LOL

Briheller [9:53 AM]: you da MAN

Joshwresnik [9:54 AM]: welcome to the new world of e-commerce

Briheller [9:55 AM]: yesssss

Briheller [9:55 AM]: I'm doing a little revenue dance at my desk now

Joshwresnik [9:55 AM]: lol

Brian A. Heller >>

Josh deserves an award for this one. I'm not kidding.

Monday, January 20, 2003 America Online: daticon07

002S1AOL0070046343

Confidential Treatment Requested

Case 1:05-cv-00578-GK Document 2 Filed 03/21/2005 Page 1 of 1

CLERK'S OFFICE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIACO-932
Rev. 4/96NOTICE OF DESIGNATION OF RELATED CIVIL CASES PENDING
IN THIS OR ANY OTHER UNITED STATES COURT**FILED**

MAR 21 2005

Civil Action No. 05 0578
(To be supplied by the Clerk)NOTICE TO PARTIES:

Pursuant to Rule 405(b)(2), you are required to prepare and submit to the Clerk at the time of filing any civil action which is related to any pending cases or which involves the same parties and relates to the same subject matter of any dismissed related cases. This form must be prepared in sufficient quantity to provide one copy for the Clerk's records, one copy for the Judge to whom the case is assigned and one copy for each defendant, so that you must prepare 3 copies for a one defendant case, 4 copies for a two defendant case, etc.

NOTICE TO DEFENDANT:

Rule 405(b)(2) of this Court requires that you serve upon the plaintiff and file with your first responsive pleading or motion any objection you have to the related case designation.

NOTICE TO ALL COUNSEL

Rule 405(b)(3) of this Court requires that as soon as an attorney for a party becomes aware of the existence of a related case or cases, such attorney shall immediately notify, in writing, the Judges on whose calendars the cases appear and shall serve such notice on counsel for all other parties.

The plaintiff, defendant or counsel must complete the following:

I. RELATIONSHIP OF NEW CASE TO PENDING RELATED CASE(S).

A new case is deemed related to a case pending in this or another U.S. Court if the new case: [Check appropriate box(e)s) below.]

- (a) relates to common property
- (b) involves common issues of fact
- (c) grows out of the same event or transaction
- (d) involves the validity or infringement of the same patent
- (e) is filed by the same pro se litigant

2. RELATIONSHIP OF NEW CASE TO DISMISSED RELATED CASE(ES)

A new case is deemed related to a case dismissed, with or without prejudice, in this or any other U.S. Court, if the new case involves the same parties and same subject matter.

Check box if new case is related to a dismissed case:

3. NAME THE UNITED STATES COURT IN WHICH THE RELATED CASE IS FILED (IF OTHER THAN THIS COURT):

4. CAPTION AND CASE NUMBER OF RELATED CASE(E'S). IF MORE ROOM IS NEED PLEASE USE OTHER SIDE.

SEC

v. Charles Johnson, Jr., et al.C.A. No. 05cv0036 GK

March 21, 2005

DATE

Signature of Plaintiff/Defendant (or counsel)

2

Prince, Edward Minor (Ted) (corrected version) 8/31/2006 9:10:00 AM

1	1
2	IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
3	IN AND FOR THE COUNTY OF LOS ANGELES
4	Coordination Proceeding Special Title
5	(Rule) 1550(b)
6	AOL TIME WARNER CASES I & II
7	Coordinated Actions:
8	-----
9	California State Teachers' Retirement)
10	System v. AOL Time Warner, Inc., et al)
11	(S.F. Super. Ct. No. CGC-03-422609)
12)
13	The Regents of the University of)
14	California, et al v. Parsons, et al)
15	(L.A. Super. Ct. No. BC293848))
16)
17	California Public Employees')
18	Retirement System v. AOL Time)
19	Warner, Inc., et al)
20	(Sacramento Super. Ct. No. 03AS04015))
21	-----
22	FTIF Franklin Aggressive Growth)
23	Fund, et al v. Time Warner)
24	(San Mateo Super. Ct.)
25	No. CIV45222))

3

4

1	1
2	APPEARANCES
3	Videotaped deposition of Edward Minor Prince,
4	Jr., held at the law offices of:
5	Williams & Connolly
6	725 Twelfth Street, Northwest
7	Washington, D.C. 20005
8	(202) 434-5000
9	-----
10	Pursuant to Notice, before Dawn M. Hart,
11	RPR/RMR and Notary Public in and for the State of
12	Maryland.
13	-----
14	ON BEHALF OF CERTAIN CALIFORNIA AND OHIO
15	PLAINTIFFS:
16	SUSAN GOSS TAYLOR, ESQUIRE
17	LAUREN KERKOFF, ESQUIRE
18	LERACH, COUGHLIN, STOIA, GELLER
19	RUDMAN & ROBBINS, LLP
20	655 West Broadway, Suite 1900
21	San Diego, California 92101
22	(619) 231-1058
23	-----
24	ON BEHALF OF THE PLAINTIFFS CALPERS AND
25	LA FUNDS:
26	AVIAH COHEN PIERSON, ESQUIRE
27	KAPLAN FOX & KILSHIMER, LLP
28	805 Third Avenue
29	New York, New York 10022
30	(212) 687-1980
31	-----
32	ON BEHALF OF THE DEFENDANT COLBURN:
33	MARY I. PETERS, ESQUIRE
34	ZUCKERMAN SPAEDER, LLP
35	1800 M Street, Northwest
36	Washington, D.C. 20036
37	(202) 778-1800

Prince, Edward Minor (Ted) (corrected version) 8/31/2006 9:10:00 AM

1		1
2	APPEARANCES CONTINUED	2 APPEARANCES CONTINUED
3	ON BEHALF OF THE TIME WARNER DEFENDANTS:	3 ON BEHALF OF THE WITNESS:
4	THOMAS M. CRAIG, ESQUIRE	4 DEBRA D. BERNSTEIN, ESQUIRE
5	WILLIAMS & CONNOLLY	5 JOE D. WHITLEY, ESQUIRE
6	725 Twelfth Street, Northwest	6 ALSTON & BIRD, LLP
7	Washington, D.C. 20005	7 One Atlantic Center
8	(202) 434-5000	8 1201 West Peachtree Street
9		9 Atlanta, Georgia 30309-3424
10	GARY A. BORNSTEIN, ESQUIRE	10 (404) 881-7000
11	STACY LOZNER, ESQUIRE	11
12	CRAVATH, SWAINE & MOORE, LLP	12
13	Worldwide Plaza	13
14	825 Eighth Avenue	14
15	New York, New York 10019-7475	15 ALSO PRESENT: Mary Britton, Esquire, AOL
16	(212) 474-1934	16
17		17
18		18
19		19
20		20
21		21
22		22
23		23
24		24
25		25

7		8
1		1 EDWARD MINOR PRINCE, JR.
2	CONTENTS	2 PROCEEDINGS
3	EXAMINATION OF EDWARD MINOR PRINCE, JR.	3 VIDEOGRAPHER: Here begins Videotape No. 1
4	By Ms. Taylor 9	4 in the deposition of Ted Prince in the matter AOL Time
5	E X H I B I T S	5 Warner Securities Litigation.
6	(Attached to the transcript.)	6 Today's date is August 31st, 2006. The
7	PRINCE DEPOSITION EXHIBITS PAGE	7 time on the video monitor is 9:10 a.m. The video
8	3104 9AOL230012-14 55	8 operator today is Will Freburger. This video
9	3105 1AOL371040005-06 65	9 deposition is taking place at Williams & Connolly, 725
10	4601 4/30/01 E-mail, Tyeryar to Quinn 77	10 12th Street, Northwest, Washington, D.C.
11	4602 E-mail String 83	11 Counsel, please voice Identify yourselves
12	4603 E-mail String 96	12 and state whom you represent.
13	4604 E-mail String 123	13 MS. TAYLOR: Susan Taylor from Lerach
14	4605 10/3/01 E-mail to Mr. Prince	14 Coughlin Stoia Geller Rudman & Robbins on behalf of
15	re Worldcom Update 133	15 various individual action Plaintiffs.
16	4606 11/2/01 E-mail, Haire to Prince 141	16 MS. KERKOFF: Laura Kerkoff also with
17	4607 E-mail String 150	17 Lerach Coughlin.
18	4608 1/15/01 E-mail, Prince to Colburn 159	18 MS. PIERSON: Aviah Cohen Pierson with
19	4609 E-mail String 164	19 Kaplan Fox & Kilsheimer representing CalPERS and LA
20	4610 E-mail String 178	20 Funds.
21	4611 E-mail String 184	21 MS. PETERS: Mary Peters from Zuckerman
22	4612 7/18/02 Instant Messenger E-mail 200	22 Spaeder on behalf of Defendant David Colburn.
23		23 MR. BORNSTEIN: Gary Bornstein with my
24		24 colleague Stacy Lozner from Cravath, and Tom Craig
25		25 from Williams & Connolly. We represent Time Warner.

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1 **EDWARD MINOR PRINCE, JR.**
 2 A That that was a proposed component of a
 3 multi, you know, component deal.
 4 Q Okay. And do you recall when that
 5 discussion occurred?
 6 A I do not.
 7 Q Do you recall who you were talking to?
 8 A Andrew was updating me on that, and that was
 9 one of the issues of this, of this component -- of
 10 this multi-component deal.
 11 Q Okay. Was Andrew responsible for
 12 negotiating with Worldcom?
 13 A Yes, he was.
 14 Q Okay. The second point under Our
 15 Understanding states, we subsequently agreed with you
 16 that AOL Europe would actually pay the full shortfall
 17 liability amount under the 10/98 CS Europe agreement
 18 and that you would buy ads on AOL Time Warner
 19 Properties. Do you see that?
 20 A Yes, I do.
 21 Q And do you recall discussions regarding that
 22 component of the, of the deal?
 23 A I do not recall discussions related to that.
 24 Q Okay. It states further in that paragraph,
 25 as I explained in my E-mail on 10/18, we had accrued

1 **EDWARD MINOR PRINCE, JR.**
 2 **17 million for the shortfall liability part-way**
 3 **through Q3, but subsequently we accrued an additional**
 4 **amount, in parens, at that time 8 million, now**
 5 **9 million, so we would pay you the shortfall liability**
 6 **of 26 million and you would buy 25 million of ads. Do**
 7 **you see that?**
 8 A Yes, I do.
 9 Q And what's your understanding of that
 10 component of the deal?
 11 A I was not involved on the ad piece, but
 12 we're saying the actual liability from this contract
 13 we're willing -- we owe and we will pay the shortfall
 14 of that liability.
 15 Q And you understood that you would get
 16 \$25 million in advertising in return, correct?
 17 MR. BORNSTEIN: Object to the form of that
 18 question.
 19 A Yeah, I'm -- can you repeat that?
 20 Q And part of deal was to get \$25 million of
 21 advertising in return, correct?
 22 MR. BORNSTEIN: Object to the form.
 23 A These deals were negotiated
 24 contemporaneously, so there was an ad component that
 25 had -- there was an ad component as part of us paying

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1 **EDWARD MINOR PRINCE, JR.**
 2 off this liability that we owed.
 3 Q And the ad component had similar, if not the
 4 same, value as the liability that was being paid off,
 5 correct?
 6 MS. BERNSTEIN: You mean discussed as of
 7 this time?
 8 MS. TAYLOR: Right.
 9 MS. BERNSTEIN: Just to narrow down the time
 10 frame.
 11 A In this E-mail, the ad component is --
 12 that's being discussed is similar to the liability
 13 that we, that we owed CompuServe.
 14 Q Okay. And did you have an understanding
 15 that that was to be a component of the deal, that AOL
 16 would receive advertising in an amount equal to what
 17 was paid for the shortfall liability?
 18 A No, I did not have an understanding of that.
 19 Q If you look at the next section entitled
 20 Your Understanding.
 21 A Yes.
 22 Q Do you see that?
 23 A Yes.
 24 Q Under No. 1, the second sentence in that
 25 paragraph states, we also understand from your note

1 **EDWARD MINOR PRINCE, JR.**
 2 that you are willing to buy 25 million for ads,
 3 although it is -- although it's unclear to us how you
 4 would pay 25 million in ads unless we agreed to settle
 5 the shortfall liability for a \$25 million payment. Do
 6 you see that?
 7 A Yes.
 8 MS. BERNSTEIN: With that \$25 million
 9 payment.
 10 MS. TAYLOR: Excuse me?
 11 MS. BERNSTEIN: I was just -- you said for a
 12 \$25 million payment. It just says with.
 13 Q With a \$25 million payment. Do you see that
 14 language?
 15 A Yes.
 16 Q Does that refresh your recollection
 17 regarding that AOL expected to get an ad deal in the
 18 amount that it paid for the shortfall liability?
 19 A I think it was -- there was a
 20 contemporaneous piece to this -- to paying off this
 21 liability which was an ad component.
 22 Q What do you mean by a contemporaneous piece?
 23 A Sorry. Contemporaneous negotiation.
 24 Q Okay. So it's your understanding that the
 25 advertising negotiation was completely independent of

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1 **EDWARD MINOR PRINCE, JR.**
 2 the shortfall liability payment?
 3 A It was a separate agreement being negotiated
 4 by separate people both on the AOL side and on the
 5 Worldcom side, was my understanding, albeit
 6 contemporaneously. There was a contemporaneous
 7 negotiation.
 8 Q Do you recall working with Mr. Haire to
 9 draft the language that's in Exhibit 4606 to be given
 10 to Mr. Colburn to use?
 11 A I think I said earlier I don't recall doing
 12 those edits.
 13 Q Okay. Do you recall the situation in
 14 general where you and Mr. Haire were asked to prepare
 15 a message of -- with information of the nature in 4606
 16 for Mr. Colburn?
 17 A I'm sorry, can you rephrase that?
 18 Q Do you recall the situation in general --
 19 irrespective of whether you recall drafting and
 20 editing this specific language, do you recall a
 21 situation being asked to put together the information
 22 for Mr. Colburn?
 23 MR. BORNSTEIN: Put together what
 24 information for Mr. Colburn?
 25 Q Information that's included in this exhibit,

1 **EDWARD MINOR PRINCE, JR.**
 2 but I'm not talking about necessarily editing, you
 3 know, this particular --
 4 A So different information than what's in --
 5 Q Do you recall being asked to put together
 6 information regarding the shortfall liability and the
 7 advertising component with respect to Worldcom's
 8 understanding and AOL's understanding?
 9 A Other -- different than this?
 10 Q In general, do you remember being asked to
 11 do that?
 12 A In general. I don't recall the specifics
 13 around that.
 14 Q Do you recall general?
 15 A No, I don't.
 16 Q So you don't recall anything about this
 17 particular -- being asked to put together the
 18 different viewpoints regarding this agreement for
 19 Mr. Colburn?
 20 A No, I don't remember that request from him.
 21 MS. TAYLOR: Ask the Court Reporter to mark
 22 this as Exhibit 4607.
 23 (Exhibit No. 4607 was marked for identification
 24 and was attached to the transcript.)
 25

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1 **EDWARD MINOR PRINCE, JR.**
 2 MS. TAYLOR: For the record, this is a
 3 multiple-page document bearing Bates stamp
 4 2AOL059840245 through 50.
 5 A (Reviewing.)
 6 Okay.
 7 BY MS. TAYLOR:
 8 Q And do you recognize this document?
 9 A I don't recall getting it.
 10 Q Okay. Have you ever seen it before?
 11 A Yes, I have seen it.
 12 Q Okay. Have you seen it outside the -- do
 13 you recall seeing it outside the review -- outside of
 14 any review with your counsel?
 15 A No, I do not.
 16 Q If you look at the top of the first page --
 17 well, this document contains a series of E-mails,
 18 correct?
 19 A Correct.
 20 Q And on the top of the first page, the
 21 subject Forward, Forward AOL Worldcom, 11/5/01, from
 22 you to Andrew Haire, correct?
 23 A That is correct.
 24 Q Okay. Do you recall forwarding these
 25 E-mails to Mr. Haire?

1 **EDWARD MINOR PRINCE, JR.**
 2 A I do not.
 3 Q Okay. Any reason to believe you wouldn't
 4 have done so during the time you were employed at AOL?
 5 A No, there's none.
 6 Q Okay. And the next E-mail, same subject,
 7 date also 11/5/01, from Mr. Colburn to you and an
 8 Srindner, correct?
 9 A Correct.
 10 Q And do you know who Srindner is?
 11 A Yes.
 12 Q Who's that?
 13 A Steven Rindner.
 14 Q Okay. And what was his role at AOL?
 15 A He was in charge of the advertising piece --
 16 or he was Vice-President of Advertising within
 17 Business Affairs.
 18 Q Okay. And I'm actually going to have you
 19 flip to the back of this document, on Page 5. It ends
 20 in Bates 249 at the bottom.
 21 A Yes.
 22 Q Okay. Do you see that?
 23 A Yes.
 24 Q There's an E-mail at the bottom of the page
 25 from David Colburn sent Sunday, November 4th to

Prince, Edward Minor (Ted) (corrected version) 8/31/2006 9:10:00 AM

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1 **EDWARD MINOR PRINCE, JR.**
 2 **Scott Sullivan, subject AOL/Worldcom. Do you see**
 3 **that?**
 4 A Yes, I do.
 5 Q Okay. And if you look at the text of this
 6 E-mail, it contains the AOL View and Worldcom View in
 7 bullet points that is a further draft of the E-mail we
 8 looked at in Exhibit 4606; is that correct?
 9 A Without going back and comparing, I think
 10 that is correct.
 11 Q Okay. And do you recall working any further
 12 with Mr. Colburn in preparing this information to send
 13 to Mr. Sullivan?
 14 A No, I do not.
 15 Q Okay. If you then -- if you then move back
 16 to the first page of the document, the E-mail at the
 17 bottom of the page is from Mr. Sullivan to David
 18 Colburn on 11/5/01, correct?
 19 A Yes, that is correct.
 20 Q Okay. And does it appear that Mr. Sullivan
 21 has forwarded all the sort of intervening E-mails in
 22 his E-mail chain; is that your understanding of, of
 23 these various E-mails?
 24 A It's a little hard to follow, but -- whether
 25 he's copied or forwarded them. There are, there are

1 **EDWARD MINOR PRINCE, JR.**
 2 multiple E-mails attached to this.
 3 Q Okay. Contained in the E-mail that
 4 Mr. Sullivan eventually sent to Mr. Colburn?
 5 A Yes.
 6 Q Okay.
 7 MS. BERNSTEIN: It looks like a lot of
 8 E-mails within the E-mail.
 9 MS. TAYLOR: I believe that's how it appears
 10 in their system when they forward them.
 11 THE WITNESS: Yeah, it's hard to --
 12 Q Okay. So looking at this E-mail on the
 13 bottom of the first page from Mr. Sullivan, it states,
 14 David, we are issuing 17 million in credits on the CSI
 15 deal. If you want 17 million in advertising, then pay
 16 17 million instead of the credit and we will place ads
 17 even though we don't need them. If you want
 18 \$20 million in advertising, then pay 17 million
 19 instead of the credit, pay another 3 million and we
 20 will place ads even though we don't need them. If you
 21 want \$25 million in advertising, then pay 17 million
 22 instead of the credit, pay another 8 million and we
 23 will place the ads even though we don't need them, et
 24 cetera, et cetera. Do you see that?
 25 A Yes, I do.

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1 **EDWARD MINOR PRINCE, JR.**
 2 Q Do you have an understanding of what
 3 Mr. Sullivan is talking about here?
 4 A No, I do not.
 5 Q Did you at any time come to learn that the
 6 advertising deal with Worldcom was in exchange for the
 7 amount that AOL would pay to satisfy the shortfall on
 8 the CompuServe portion of the arrangement?
 9 MS. BERNSTEIN: I'm sorry, can you say that
 10 again?
 11 A Yeah, can you say that again?
 12 MS. TAYLOR: Can you say the question. Read
 13 back the question.
 14 (Record read.)
 15 A No. As I said before, they were
 16 contemporaneously negotiated, but not in exchange for.
 17 Q If you look at the next paragraph of
 18 Mr. Sullivan's E-mail it says, David, this has turned
 19 into a money-changing scheme and it can't continue.
 20 Do you see that?
 21 A Yes, I do.
 22 Q Do you know what he's referring to there?
 23 A No, I do not.
 24 Q Do you recall discussing that with
 25 Mr. Colburn in November of 2001?

1 **EDWARD MINOR PRINCE, JR.**
 2 A No, I do not.
 3 Q Do you recall discussing Mr. Sullivan's
 4 comments with anyone else at AOL in that time frame?
 5 A I believe I forwarded this to Andrew and
 6 asked him if -- what he thought of this.
 7 Q Okay. And do you recall what he said?
 8 A I say -- yes. He thought that Mr. Sullivan
 9 was very confused and frustrated with the process and
 10 that this did not reflect where Andrew, who was
 11 negotiating the transaction, was on the transaction.
 12 Q Okay. What did he feel Mr. Sullivan was
 13 confused about with respect to the transaction?
 14 A My recollection is that the amount of the --
 15 there were two things at issue; the payment versus the
 16 waiver of the liability and the amount of the
 17 liability, and there was a lot of confusion about
 18 those two variables.
 19 Q Okay. Do you recall anything more
 20 specifically regarding what the confusion was?
 21 A No, I do not.
 22 Q I believe you said you forwarded this E-mail
 23 to Mr. Haire, and I'm assuming you're referring to the
 24 E-mail at the top of the page?
 25 A Correct.

AD 12/2-02

■ Internal Correspondence

■ McLean, VA Office

~~Draft - Subject to Further Review and Input~~**FINAL**

Date: November 6, 2002

To: AOL Investigation Files

From: Eddie Paul *EP*

Subject: Telefonica DataCorp, S.A.U. (Telefonica) December 2000 Agreements

Original EY Procedures Performed

We reviewed America Online, Inc.'s (AOL or the Company) advertising agreement with Telefonica as part of our revenue testing procedures for the quarter ended December 31, 2000. We tested the fair value of the advertising using the carriage plans and rates at which the advertising was provided.

Company's Historical Accounting

The advertising contracts were accounted for as standard insertion orders for \$25 million with revenues to be recognized as the impressions were provided. Refer to the attached Company summary for further detail of the historical accounting.

Primary Areas of Concern in the Investigation

The Company's review focused on the fair value of the advertising that was provided by AOL and the fair value of the network services that the Company committed to purchase.

Information Gathered Through the Company's Investigation

The Company obtained emails and desk files accumulated by Cravath related to the Telefonica agreements and reviewed that information for discrepancies from the Company's historical accounting. The information obtained in conjunction with the Company's investigation indicated that there was a verbal agreement between AOL and Telefonica such that AOL would provide "bonus" impressions that were in addition to the impressions guarantee in the insertion orders, and such bonus impressions were to be provided in periods beyond the period in which the impressions provided for in the insertion orders would be delivered by AOL. AOL's Finance Department and Accounting Policy Department became aware of this issue and appropriately deferred revenue recognition related to the bonus impressions to the period in which the bonus impressions were delivered. Refer to the attached Company summary for a description of the adjustment to revenue recognition that was recorded in the quarter ended December 31, 2000 as a result of the bonus impressions guarantee.

EYR 008912
 Confidential Treatment
 Request by Ernst & Young LLP

With the exception of the aforementioned bonus impressions, the information gathered by the Company did not indicate that AOL agreed to items other than what was in the contracts or that the Company's historical accounting for the agreements was inappropriate. We note that Telefonica was mentioned in the following Company interview questionnaires we reviewed:

Linda Clarizio – Ms. Clarizio indicated that it seemed unusual that Telefonica, a non-US corporate network provider, wanted to advertise to consumers on domestic AOL properties.

Matt Korn – Mr. Korn indicated that it seemed unusual that Telefonica, a non-US corporate network provider, wanted to advertise to consumers on domestic AOL properties.

Lori Locke – When inquired as to whether there were any unusual transactions, Ms. Locke indicated that Telefonica was one such transaction.

Jim MacGuidwin - When inquired as to whether there was anything unusual about the items included in the list of transactions that was provided to Mr. MacGuidwin that the Company should follow up, he indicated that the agreement with Telefonica was one such transaction based on news articles and discussions with Randy [Boe].

Kent Wakefield – Mr. Wakefield indicated that agreement with Telefonica did not make sense.

Mark Wovsaniker – Mr. Wovsaniker indicated that the agreement with Telefonica had side deals or quid pro quo arrangements not documented in the overall deal agreement.

See attached Company interview questionnaires for further detail. All of the above comments were considered by the Company in the execution of their investigation.

Company's Interpretation of the Additional Information

We discussed the agreements with Cheryl Ingram who indicated that the emails and documents obtained during the investigation including the information obtained during the interviews with AOL personnel or through discussions with PriceWaterhouseCoopers or Cravath, did not indicate that the Company's historical accounting was not appropriate.

Included in the information gathered by the Company was a document obtained from Lori Locke with handwritten notes indicating that AOL's Business Affairs (BA) Group had secretly entered into agreements to manipulate revenue recognition. We inquired of Ms. Ingram about whether the Company addressed this document during its internal investigation. Ms. Ingram indicated that this document was discussed with Ms. Locke and Ms. Locke indicated that the notes were making reference to the bonus impressions (discussed in the above section) that certain BA personnel verbally guaranteed to provide Telefonica. She made the notes at the time she was notified that BA had made impression guarantees beyond the term of the advertising agreement.

We noted that in conjunction with the investigation the Company obtained various email messages in which the sender indicated that the addressee should be careful when documenting the agreements since the contracts are unusual. In addition, there was an email message where the sender indicated that the addressee should not talk to

AOL's Accounting Group about the Telefonica contracts. Although the email messages did not include specific items that indicate the Company's historical accounting was not appropriate, our concern was that the sender was trying to hide items that may impact revenue recognition. We inquired of Ms. Ingram as to whether such email messages were considered as part of the Company's internal investigation. Ms. Ingram informed us that such email messages were considered and that the sender was making reference to the bonus impressions discussed above. Ms. Ingram informed us that she believes the sender was making reference to the bonus impressions based on her discussions with Company personnel, based on the dates of the email messages, and there was no information gathered that would suggest otherwise.

The network services agreement required Telefonica to provide services to the purchasing AOL affiliate (e.g., AOL Europe, AOL Latin America, etc.) on a most favored customer (MFC) basis, wherever it offered such services. Certain countries in which Telefonica provides network services provide statutory rates that require network service providers to charge customers the same rates based on the volume of services purchased. However, the MFC provision in the network services agreement guaranteed that AOL would receive network services at the lowest rates charged by Telefonica for such services without regard to the statutory rates or volume of services purchased. The information obtained by AOL during its investigation included an email message and an advertising deal summary indicating that in situations where the statutory rate charged to AOL was higher than the lowest rate charged to another customer for similar services, Telefonica would issue AOL a credit for the difference. The email message and advertising deal summary indicate that the credit issued by Telefonica may be facilitated through a cash refund to AOL, or that Telefonica would purchase advertising from AOL for an amount equal to the credit. The Company informed us that Telefonica never issued AOL credits, in any form, for network services.

Company gathered information included emails with correspondence indicating that AOL advertising linked to Telefonica's website, which was displayed in Spanish, and/or a web page with only the name "Telefonica" in the middle of the page. We inquired of Ms. Ingram as to whether they considered this correspondence in their investigation. Ms. Ingram informed us that she discussed this correspondence with Company personnel. The Company's position is that this does not have any impact on the Company's historical accounting as Telefonica, not AOL, bore sole responsibility for and maintained sole control over the content of the Telefonica website and its ability to handle traffic generated by the AOL advertisements.

EY Procedures

Our procedures included reviewing our historical work-papers related to Telefonica, reviewing the emails and desk files that were obtained in conjunction with the investigation, reviewing the summary of the historical accounting prepared by the Company, reviewing the questionnaires the Company used to document their interviews with Company personnel, and holding discussions with Ms. Ingram to discuss certain of the documents we reviewed and whether there were any items in addition to the aforementioned information she had knowledge of that may indicate the Company's historical accounting was not appropriate.

EY Conclusions

Based on the information gathered by the Company as a result of their investigation we consider their interpretation of the information, as described above, to be reasonable.

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2	VOLUME 1	2	No. CIV45222))
3	IN THE SUPERIOR COURT OF THE STATE OF CALIFORN	3	Water and Power Employees') Judicial Council
4	IN AND FOR THE COUNTY OF LOS ANGELES	4	Retirement Plan, et al v.) Coordination Proceeding
5	Coordination Proceeding Special Title	5	AOL Time Warner, et al) Nos. 4322 and 4325
6	(Rule) 1550(b)	6	(L.A. Super. Ct. BC346081))
7	AOL TIME WARNER CASES I & II	7	-----
8	Coordinated Actions:	8	Videotaped Deposition of MARK WOVSANIKER
9		9	Washington, D.C.
10	California State Teachers' Retirement)	10	Monday, July 24, 2006
11	System v. AOL Time Warner, Inc., et al)	11	9:18 a.m.
12	(S.F. Super. Ct. No. CGC-03-422609))	12	Job No.: 22-83215
13)	13	Pages: 1 - 336
14	The Regents of the University of)	14	Reported By: Dawn M. Hart, Notary Public, RPR/RMR
15	California, et al v. Parsons, et al)	15	Videographer: Cali Day
16	(L.A. Super. Ct. No. BC293848))	16	
17)	17	
18	California Public Employees')	18	
19	Retirement System v. AOL Time)	19	
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24	Fund, et al v. Time Warner)	24	
25	(San Mateo Super. Ct.)	25	

0003		0004	
2	Videotaped deposition of Mark Wovsaniker, held at	2	A P P E A R A N C E S
3	the law offices of:	3	ON BEHALF OF THE PLAINTIFFS CALIFORNIA AND OH
4	Williams & Connolly	4	PLAINTIFFS:
5	725 Twelfth Street, Northwest	5	MICHAEL J. DOWD, ESQUIRE
6	Washington, D.C. 20005	6	MATTHEW I. ALPERT, ESQUIRE
7	(202) 434-5000	7	LERACH, COUGHLIN, STOIA, GELLER
8		8	RUDMAN & ROBBINS, LLP
9		9	655 West Broadway, Suite 1900
10		10	San Diego, California 92101
11	Pursuant to Notice, before Dawn M. Hart,	11	(619) 231-1058
12	RPR/RMR and Notary Public in and for the State of	12	
13	Maryland.	13	ON BEHALF OF THE DEFENDANT COLBURN:
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15		15	ZUCKERMAN SPAEDER, LLP
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17		17	Washington, D.C. 20036
18		18	(202) 778-1800
19		19	
20		20	ON BEHALF OF THE TIME WARNER DEFENDANTS:
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0005		0006	
2	APPEARANCES CONTINUED	2	APPEARANCES CONTINUED
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24	Washington, D.C. 20006-1600	24	
25	(202) 778-9100	25	

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1 **MARK WOVSANIKER**
 2 became a partner.
 3 **Q** Were there any particular types of audits or
 4 industries that you were involved in auditing during
 5 the time that you were with Ernst & Young but before
 6 you began working on AOL matters?
 7 **A** I -- a large -- as a partner, a large amount
 8 of my time was spent in merger and acquisition work.
 9 I also worked on software companies and entertainment
 10 companies.
 11 **Q** When you say merger and acquisition work,
 12 exactly what do you mean by that?
 13 **A** We assisted companies and venture capital
 14 firms in due diligence and making acquisitions.
 15 **Q** And what do you mean when you say due
 16 diligence?
 17 **A** Review of financial information from target
 18 companies.
 19 **Q** So in other words, for a company that was
 20 interested in making an acquisition, you performed
 21 this dual diligence as you described it for the
 22 acquiring company?
 23 **A** That's correct.
 24 **Q** Okay. And what's the purpose of doing due
 25 diligence?

1 **MARK WOVSANIKER**
 2 **A** To gain an understanding of the company's
 3 financial information to try and make appropriate
 4 decisions about purchase and about value.
 5 **Q** When did you first work on matters related
 6 to either AOL or Time Warner at Ernst & Young?
 7 **A** I was a staff accountant in 1977 on Time,
 8 Inc.
 9 **Q** And that's where you worked with Mr. Ripp?
 10 **A** Yes.
 11 **Q** And how long did you remain on the Time,
 12 Inc. audit team?
 13 **A** For one year.
 14 **Q** And when was the next time that you worked
 15 on either AOL or Time Warner matters?
 16 **A** As a partner I consulted on various issues
 17 affecting both companies.
 18 **Q** Okay. So in other words, between '77 and
 19 '89 as best you recall you didn't do any work with
 20 regard to AOL or Time Warner?
 21 **A** Not that I recall.
 22 **Q** Okay. And when you say you consulted as a
 23 partner, what do you mean by that? Do you have
 24 specific things that you remember consulting about?
 25 **A** Nothing that I can remember specifically. I

34

35

1 **MARK WOVSANIKER**
 2 remember there were various issues with respect to
 3 potential acquisitions that AOL was making. I was
 4 consulted on potential accounting for those. There
 5 were -- there may have been one or two issues with
 6 Time Warner that I was consulted on.
 7 **Q** Do you recall any particular acquisitions
 8 made by AOL that you consulted on?
 9 **A** I don't.
 10 **Q** And do you recall any particular
 11 acquisitions that you were consulted on with regard to
 12 Time Warner?
 13 **A** I don't.
 14 **Q** Did there become -- did there come a time
 15 that you became involved in audits of AOL or Time
 16 Warner?
 17 **A** Yes.
 18 **Q** Okay, tell me about that.
 19 **A** In -- I believe it was in, in March 1998, I
 20 was asked to become the audit partner for AOL.
 21 **Q** And who asked you to do that?
 22 **A** I can't recall specifically.
 23 **Q** How does that work at Ernst & Young in that
 24 time frame, say in March of '98, how would you get a
 25 new audit client or become an audit partner for a new

1 **MARK WOVSANIKER**
 2 client?
 3 **A** Someone at a senior level in the firm
 4 approached me and asked me if I would take that on.
 5 **Q** And what had you been doing prior to that
 6 time?
 7 **A** I was primarily involved in merger and
 8 acquisition due diligence work.
 9 **Q** And what was the first quarterly review or
 10 year-end audit that you became involved with as an
 11 Ernst & Young partner in connection with AOL?
 12 **A** June 1998.
 13 **Q** And that would have been the year-end audit
 14 for AOL at that time?
 15 **A** Yes.
 16 **Q** And who worked with you at Ernst & Young in
 17 connection with the year-end '98 audit of AOL?
 18 **A** John Shames was the second partner. There
 19 were various staff members.
 20 **Q** Do you recall any of the staff members at
 21 that time?
 22 **A** I just recall Stephen Kenny.
 23 **Q** And had you worked with Mr. Kenny prior to
 24 that time?
 25 **A** Yes.

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1 MARK WOVSANIKER

2 Q And in connection with what issues or deals?
3 A He had worked with me on various deals and
4 transactions in New York.5 Q And you encouraged him to move to Virginia
6 and work on the AOL audits; is that correct?

7 A Yes.

8 Q Did you consider yourself a mentor for Mr.
9 Kenny?

10 A I probably was one of many.

11 Q I take it you remained the engagement
12 partner for AOL until the merger with AOL Time Warner?

13 A No.

14 Q Okay. How did you your role change?

15 A In I believe May of 1999, Mike Kelly asked
16 me to join the company.

17 Q And that's when you went to work for AOL?

18 A Yes.

19 Q Tell me about your discussions with Mr.
20 Kelly when you first came on board AOL, I mean about
21 your employment.

22 A I'm not sure what --

23 Q Sure.

24 A -- what you mean.

25 Q Did you approach Mr. Kelly, did he approach

1 MARK WOVSANIKER

2 you? Just tell me about your conversations.
3 A No, he approached me. He said that, that he
4 thought it was appropriate for the company to have
5 some of the skills that I had in-house and he asked me
6 to join the company.7 Q Okay. So that would have been in May of
8 1998 -- 99?

9 A May of 1999, correct.

10 Q Did you know Mr. Kelly prior to the time
11 that you became an Ernst & Young engagement partner
12 for AOL in June of '98?

13 A No.

14 Q How many times had you met with Mr. Kelly
15 prior to the time he asked you if you would be
16 interested in a position with AOL?17 A Fairly frequently. I can't recall
18 specifically.

19 Q In connection with your audit work?

20 A Yes.

21 Q Okay. Were there other people at the AOL
22 who you had worked with in the past, former Ernst &
23 Young people for example, other than Mr. Ripp?24 MR. BORNSTEIN: Object to the form of that
25 question. Mr. Ripp was not at AOL at the time.

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39

1 MARK WOVSANIKER

2 MR. DOWD: Sure. I understand.

3 A Yes.

4 Q Okay. And tell me about that.

5 A Tom Pierno.

6 Q Anyone else besides Mr. Pierno?

7 A Nothing -- no one that I can think of.

8 Q And how had you worked with Mr. Pierno?

9 A He had formerly been in the Ernst & Young
10 office in New York.11 Q Had you worked with him on particular audits
12 or issues?13 A He was -- he and I were at one time both
14 assigned to the Gulf and Western engagement.15 MR. RUGEN: Mr. Wovsaniker, as Ernst &
16 Young's counsel, I just want to caution you if you --
17 you're free to testify about public engagements for
18 publicly-traded companies, but I would prefer that you
19 not testify about private engagements or consulting
20 engagements for public companies that might not be
21 publicly-available information.

22 THE WITNESS: Okay.

23 MR. RUGEN: You can describe the latter, but
24 not use the names. How's that?

25 BY MR. DOWD:

1 MARK WOVSANIKER

2 Q During the time that you were at AOL and
3 then AOL Time Warner, I take it you had a fair amount
4 of contact with Ernst & Young audit team?

5 A Yes.

6 Q Were you the primary contact for the Ernst &
7 Young audit team in connection with the AOL division?

8 A I don't, I don't believe so, no.

9 Q Okay. Who would you say was their primary
10 contact?11 A I would say primary contact would be the
12 Controller.13 Q And that would have been Mr. MacGuidwin at
14 some point in time?

15 A Yes.

16 Q Okay. Anyone else?

17 A Later on, Tom Colan.

18 Q During the time that you were at the AOL
19 division, was there ever a time that in your mind you
20 failed to disclose relevant information to Ernst &
21 Young auditors?

22 A Not that I'm aware of.

23 Q I take it that in your role as special
24 advisor you've had time to go back and look at
25 documents relating to particular transactions that

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0001
1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF LOS ANGELES
3 COORDINATION PROCEEDING SPECIAL TITLE
4 (RULE 1550(b)):
5 AOL TIME WARNER CASES I & II
6 COORDINATED ACTIONS
7 -----x
8 REGENTS OF THE UNIVERSITY OF |
9 CALIFORNIA, et al, |
10 Plaintiffs, | L.A. Super. Ct.
11 | No. BC293848
12 vs. |
13 RICHARD D. PARSONS, et al, |
14 Defendants. |
15 -----x
16 CALIFORNIA PUBLIC EMPLOYEES |
17 RETIREMENT SYSTEM, |
18 Plaintiff, | Sacramento
19 vs. | Super. Ct. No.
20 AOL TIME WARNER, INC., et al, | 03AS04015
21 Defendants. |
22 -----x
23 -----
24 -- CAPTION CONTINUED NEXT PAGE --
25 -----
1 -----x
2 CALIFORNIA STATE TEACHERS |
3 RETIREMENT SYSTEM, |
4 Plaintiff, | S.F. Super. Ct.
5 vs. | No.
6 AOL TIME WARNER, INC., et al, | CGC-03-422609
7 Defendants. |
8 -----x
9 -----x
10 LOS ANGELES COUNTY EMPLOYEES |
11 RETIREMENT ASSOCIATION, |
12 Plaintiff, |
13 vs. | L.A. Super. Ct.
14 RICHARD D. PARSONS, et al, | No. BC303050
15 Defendants. |
16 -----x
17
18
19
20
21
22
23 -----
24 -- CAPTION CONTINUED NEXT PAGE --
25 -----

3

1 IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, 1
2 -----x 2 Confidential Videotaped Deposition of
3 OHIO PUBLIC EMPLOYEES | 3 J. MICHAEL KELLY
4 RETIREMENT SYSTEM, et al, | 4
5 Plaintiffs, | Case No. 5 HELD AT THE OFFICES OF:
6 vs. | 03CVH07-7932 6 WILLIAMS & CONNOLLY, LLP
7 RICHARD D. PARSONS, et al, | 7 725 Twelfth Street, Northwest
8 Defendants. | 8 Washington, D.C. 20005
9 -----x 9 (202)434-5145
10 SUPERIOR COURT OF THE STATE OF ALASKA
11 FIRST JUDICIAL DISTRICT
12 -----x
13 ALASKA STATE DEPARTMENT OF |
14 REVENUE, et al, |
15 Plaintiffs, | Case No.
16 vs. | 1JU-04-503-CI
17 AMERICA ONLINE, INC., et al, |
18 Defendants. |
19 -----x
20 Confidential Videotaped Deposition of 19 Pursuant to notice, before Laurie
J. MICHAEL KELLY
21 Wednesday, July 26th, 2006 20 Bangart-Smith, Registered Professional Reporter,
Washington, D.C. 21 Certified Realtime Reporter, and Notary public of
the District of Columbia.
22 9:00 a.m. 22
23 Job No.: 22-80932 23
24 Pages 1 - 321, Volume I 24
25 Reported by: Laurie Bangart-Smith 25

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1	(Appearances continued)	1	(Appearances continued)
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13	Dulles, Virginia 20166	13	Telephone: (310)712-6648
14	Telephone: (703)265-3020	14	
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21	Telephone: (212)450-2000	21	
22		22	
23		23	
24		24	
25		25	

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1 the online businesses and how to use their assets
 2 and push them into the online -- take advantage of
 3 the online opportunities that were coming down the
 4 line.

5 Q You said that you formally became the
 6 CFO of AOL Time Warner in January 2001; is that
 7 right?

8 A I said when the merger closed, it was
 9 January 2001, yes.

10 Q And did you physically move from
 11 Virginia up to New York at that point?

12 A No, sir.

13 Q Okay. Tell me about that. How did
 14 your -- physically how did you switch jobs?

15 A Physically I was in the office Monday
 16 through Friday and through the weekends up in New
 17 York. I had an apartment in New York. Most of
 18 time I would go up Monday morning very early and
 19 come back late Friday evenings.

20 Q So you would be in the New York office
 21 during the week?

22 A Absolutely.

23 Q Okay. And --

24 A Unless I was traveling -- excuse me --
 25 unless I was traveling for visiting the operations

1 out in the field or other activities, but my
 2 permanent office was in New York.

3 Q Sure. I just wanted to understand where
 4 you were based.

5 A And who replaced you as the CFO of AOL?

6 A Mr. Ripp.

7 Q Had you worked with Mr. Ripp before?

8 A I worked with Mr. Ripp during the
 9 process of the merger. Going back a bit just to
 10 expand, hopefully have some context here, during
 11 the merger we spent -- we started to spend a fair
 12 amount of time in New York during the spring and
 13 fall of 2000, it was during the spring of 2000,
 14 preparing for some meetings. We also spent a
 15 great deal of time in the early fall, late summer
 16 early fall all the way until close, in New York,
 17 working on merger integration, budgets, processes.
 18 During that time frame I had an opportunity to
 19 meet Mr. Ripp on a number of occasions and worked
 20 with him on a variety of projects at that point in
 21 time.

22 Q How long did you remain the CFO of the
 23 combined company?

24 A The time the merger was consummated
 25 until such time as in the late, late fall, early

1 winter of that year, of 2001.

2 Q Okay. Can you give me a month, say?

3 A I think officially it was -- my
 4 responsibilities carried over. That's why I'm
 5 being -- I think officially in the October time
 6 frame we named the new CFO. I retained some
 7 responsibility for some transactions that were
 8 under way that didn't -- but didn't really finish
 9 up until December time frame.

10 Q What were the transactions that you
 11 remained responsible for between October and
 12 December?

13 A The largest transaction, the majority of
 14 the work was related to contemplating and
 15 participating in the auction for the AT&T
 16 broadband assets.

17 Q So you remained in charge of that
 18 process?

19 A That's correct.

20 Q And what new role did you take after you
 21 left the CFO position?

22 A Came back down to AOL's Chief Operating
 23 Officer of the AOL Division.

24 Q And what prompted that switch from being
 25 the CFO of AOL Time Warner to be the COO of AOL?

1 A There was two issues or two related

2 issues. The first was that AOL Division was
 3 starting to struggle. We had taken a lot of
 4 struggle from a management perspective, from our
 5 perspective. Mr. Pittman first approached me
 6 about going back down to assist Mr. Schuler.
 7 Mr. Levin also approached me. We had discussions
 8 about the opportunity. I thought it might be a
 9 good career move in terms of going down and
 10 helping to do that. The second, frankly, is that
 11 the back-and-forth on a repeated basis now for
 12 almost a year and a half, the commute, was not
 13 having as much time with my family as I would have
 14 liked.

15 Q When you were the CFO of the AOL
 16 Division between '98 and the time the merger
 17 closed, who did you report to?

18 A Reported to Mr. Case.

19 Q And after the merger, how did your
 20 reporting structure change, if at all?

21 A Sorry?

22 Q How did your reporting structure change,
 23 if at all?

24 A I reported to Mr. Levin for the
 25 combined -- at the combined company level.

APPEARANCES:

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1
2 APP E A R A N C E S (continued):
3
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9
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13 Washington, D.C. 20036-5802
14
15 BY: MARYLL WEATHERSTON TOUFANIAN, ESQ.
16
17 ALSO PRESENT:
18
19 ANDREW RUDOLPH, Lerach Coughlin
20 TERRY KOELBL, Lerach Coughlin
21 MATTHEW CHAVEZ, Videographer
22 LegaLink Action Video
23
24
25

VIDEOGRAPHER: This is video operator speaking, Matthew Chavez, of Legalink Action Video, 420 Lexington Avenue, New York, New York. Today is June 15, 2006 and the time is 9:19 a.m.

We are at the offices of Heller Ehrman, 7 Times Square Plaza, New York, New York to take the videotaped deposition of Gregory Beams in the matter of AOL Time Warner, Cases I and II, in the Superior Court of the State of California, County of Los Angeles.

Will counsel please voice identify themselves for the record.

MR. HUBBELL: Good morning. Robert Hubbell of Heller Ehrman for Ernst & Young LLP and the witness.

MS. TOUFANIAN: Maryll Toufanian, Zuckerman Spaeder, for David Colburn.

MR. CYRULNIK: Owen Cyrulnik, Cravath Swaine & Moore, for Time Warner.

MR. DOWD: Mike Dowd from Lerach Coughlin. Also with me today are Andy Rudolph and Terry Koelbl, on behalf of

Beams, Gregory M. Vol. I 6/15/2006 9:19:00 AM

1 GREGORY BEAMS
 2 certain plaintiffs in California and Ohio.
 3 MS. RODON: Melinda Rodon of Kaplan
 4 Fox & Kilsheimer on behalf of plaintiffs
 5 California Public Employees' Retirement
 6 System.
 7 VIDEOPHOTOGRAPHER: Will the court
 8 reporter, Frank Bas, of Legalink please
 9 swear in the witness.
 10 GREGORY M. BEAMS,
 11 called as a witness, having been duly
 12 sworn by a Notary Public (Frank J. Bas),
 13 was examined and testified as follows:
 14 EXAMINATION
 15 BY MR. DOWD:
 16 Q. Good morning, Mr. Beams.
 17 A. Good morning.
 18 Q. Could you state your name for the
 19 record, please, and spell your last name?
 20 A. Sure. Gregory Michael Beams,
 21 spelled B-e-a-m-s.
 22 Q. And could you tell us your home
 23 address?
 24 A. Yes. It's 27706 Southeast 24th Way,
 25 Fall City, Washington 98024.

5
 1 GREGORY BEAMS
 2 Q. And what is your current work
 3 address?
 4 A. It's 999 Third Avenue, Suite 3500,
 5 Seattle, Washington 98104.
 6 Q. Okay. And who is your current
 7 employer?
 8 A. Ernst & Young.
 9 Q. And you are represented by counsel
 10 here today?
 11 A. I am.
 12 Q. And that's Mr. Hubbell?
 13 A. Yes.
 14 Q. Okay. And have you had your
 15 deposition taken before, sir?
 16 A. Yes, I have.
 17 Q. And how many times?
 18 A. On three different dates.
 19 Q. And is that by the SEC in connection
 20 with the AOL investigation?
 21 A. Yes.
 22 Q. Other than the depositions by the
 23 SEC, have you been deposed with regard to any
 24 other matters?
 25 A. No. I have not.

7
 1 GREGORY BEAMS
 2 Q. Okay. And I take it, then, you
 3 understand a little bit about the deposition
 4 process, but I just want to go over it with you
 5 so that, you know, we understand each other
 6 today.
 7 A. Okay.
 8 Q. I get to ask you a series of
 9 questions and then other counsel will have a
 10 chance to ask you questions as well. And it's
 11 just a couple of important sort of admonitions.
 12 The first is that it's important
 13 that you and I not speak at the same time. All
 14 right?
 15 A. Okay.
 16 Q. The second is if at any time I ask
 17 you a question that you don't understand or it
 18 doesn't make sense, I would ask that you ask me
 19 to rephrase it or repeat it for you. Will you
 20 do that for me?
 21 A. Yes.
 22 Q. And are you under the influence of
 23 medication or anything like that, or are you
 24 prepared to give your best testimony today?
 25 A. No medication. Prepared to give my

8
 1 GREGORY BEAMS
 2 best testimony.
 3 Q. Fair enough, sir.
 4 Have you met with Mr. Hubbell or
 5 anyone else from Heller Ehrman in preparation
 6 for your deposition today?
 7 A. Yes.
 8 Q. Okay. And how many times did you
 9 meet with your counsel to prepare for the
 10 deposition?
 11 A. I met with him for one day
 12 previously, and then three days or two and a
 13 half days this week.
 14 Q. And that was with Mr. Hubbell?
 15 A. Yes.
 16 Q. And anyone else?
 17 A. Yes. The first meeting was just
 18 with Mr. Hubbell. The two and a half days were
 19 with Michael Crane as well and Joyce Grego, and
 20 Michael Rugan joined us for one of the days.
 21 Q. Did you see any documents during
 22 your preparation for the deposition that
 23 refreshed your recollection about events that
 24 occurred at AOL or AOL Time Warner between 1999
 25 and 2004?

Beams, Gregory M. Vol. I 6/15/2006 9:19:00 AM

1 **GREGORY BEAMS**
 2 A. Yes, I did.
 3 Q. Okay. Were there any particular
 4 documents that you recall that refreshed your
 5 recollection?
 6 A. Not in particular. No.
 7 Q. Sir, it's my understanding that you
 8 graduated from Central Washington University.
 9 Is that correct?
 10 A. Yes.
 11 Q. And you graduated in 1987?
 12 A. Yes.
 13 Q. And can you tell me what type of
 14 degree you received?
 15 A. Yes. I received a degree in
 16 business administration, with a concentration in
 17 accounting, and a degree in finance.
 18 Q. And have you had any postgraduate
 19 work?
 20 A. No.
 21 Q. And you are a licensed CPA, sir, is
 22 that correct?
 23 A. Yes.
 24 Q. In what state?
 25 A. In Washington, Virginia, Oregon,

9
 1 **GREGORY BEAMS**
 2 Nevada, California, and Kentucky.
 3 Q. Okay. Did you go to work for Ernst
 4 & Young when you first graduated from college?
 5 A. Yes, I did.
 6 Q. What was your entry-level position
 7 with Ernst & Young?
 8 A. Staff accountant.
 9 Q. What office were you assigned to
 10 with Ernst & Young?
 11 A. I started in the Seattle office.
 12 Q. And were there any particular
 13 accounts that you worked on at that time?
 14 A. I worked on a number of different
 15 accounts. One of my larger accounts at that
 16 point was the SAVCO Insurance Companies. But I
 17 worked on a pretty wide dispersion over my
 18 career.
 19 Q. Okay. And was it primarily audit
 20 work during the time you were with E&Y in
 21 Washington?
 22 A. Yes. Pretty much exclusively.
 23 Q. And did there come a time that you
 24 received a promotion from staff accountant to
 25 some other position?

11
 1 **GREGORY BEAMS**
 2 A. Yes. The next position within Ernst
 3 & Young is a senior accountant. I believe I was
 4 promoted in 1989.
 5 Q. And did you receive any promotions
 6 thereafter?
 7 A. Yes. The next promotion was to
 8 manager, I don't recall the exact time frame of
 9 that. It was somewhere in the mid '90s, I
 10 believe.
 11 Q. And after that time did you receive
 12 any other promotions?
 13 A. Yes. I was promoted to senior
 14 manager after that, and then was promoted to
 15 partner on July 1st of 2001.
 16 Q. And at some point in time you
 17 transferred from the Washington office of Ernst
 18 & Young to Virginia. Is that correct?
 19 A. Yes, it is.
 20 Q. Can you tell me when that took
 21 place?
 22 A. That was in the February/March time
 23 frame of 2000.
 24 Q. Was there any particular reason that
 25 you moved from Washington to Virginia?

12
 1 **GREGORY BEAMS**
 2 A. The primary reason was because my
 3 wife's company had relocated.
 4 Q. And who did she work for?
 5 A. She worked at that time for a
 6 company called NextLink.
 7 Q. When you first transferred to
 8 Virginia, were you assigned to the AOL account?
 9 A. I don't think I was assigned
 10 initially, but shortly thereafter I joined the
 11 AOL account team.
 12 Q. Were you involved then in the
 13 year-end 2000 AOL audit?
 14 A. At that time the year-end was
 15 June 30, 2000. I did have some responsibilities
 16 for the audit that year.
 17 Q. Was that sort of the first
 18 substantive work that you did with regard to
 19 that client, as best you recall?
 20 A. Yes. I believe it was.
 21 Q. And who was your boss at that time?
 22 A. The partner on the account at that
 23 time was Stephen Hurst.
 24 Q. And had you worked with Mr. Hurst
 25 prior to that 2000 time frame?

Beams, Gregory M. Vol. I 6/15/2006 9:19:00 AM

1 GREGORY BEAMS

2 A. No, I had not.

3 Q. And if you could tell me just a
4 little bit about that year-end 2000 audit, the
5 one that ended for the financial period that
6 closed 6/30/2000.

7 A. Mm-hmm.

8 Q. Who else from Ernst & Young was
9 involved with that audit?10 A. At that time, to the best of my
11 recollection, Steve Hurst was the partner on the
12 account. Eric Klein was another senior manager
13 that was on the account. Steve Kenny at that
14 time, I believe, was a manager on the account.
15 Todd Boyle, I believe he was a manager at that
16 time. I think Ryan Coopersmith may have been a
17 staff person on the account at that time. I
18 think also Krissy Castle may have been a senior
19 auditor at that time.20 I'm not certain of the titles of the
21 staff and seniors, but I think that was about
22 it. There may have been a few other folks as
23 well on the account.24 Q. Okay. And in the hierarchy, were
25 you senior to Mr. Kenny, Mr. Boyle,

13

14

1 GREGORY BEAMS

2 Mr. Coopersmith and Ms. Castle?

3 A. I was. Yes.

4 Q. Okay. And what was the relationship
5 in terms of, you know, hierarchy I guess is the
6 best way to put it, between yourself and

7 Mr. Klein?

8 A. At that time Mr. Klein had
9 responsibility for the day-to-day execution of
10 the audit at the senior manager level. My role
11 was more directed towards specific tasks. So I
12 was more of a support role.13 Q. Okay. Do you recall what specific
14 tasks you were involved in in connection with
15 the June 30, 2000 audit?16 A. The one that I do recall
17 specifically was Mr. Hurst had asked me to look
18 at the put/call agreement that the company had
19 executed with Bertelsmann, because I had some
20 prior expertise in analyzing derivative
21 securities. There was a new standard that had
22 recently been published regarding derivatives,
23 and he had asked me to look at that to discern
24 whether or not there were any derivative
25 implications from the put/call agreement.

1 GREGORY BEAMS

2 Q. Okay. And when you use that phrase,
3 derivative securities, what do you mean by that?4 A. If there were any embedded
5 derivatives that would have been included in the
6 contract, so derivatives as defined under a
7 FAS 133, typically you think of put, and
8 forwards and future, things of that nature, but
9 the standard also tended to scope in other
10 things that you wouldn't necessarily consider to
11 be a derivative, and so he had asked me to read
12 through that and see if I found anything in
13 there that might cause concern or might need to
14 be followed up on.15 Q. Did you find anything that caused
16 concern or that needed follow-up?

17 A. No, I did not.

18 Q. Now, you said that you were promoted
19 to partner on July 1, 2001. Is that right?

20 A. Yes.

21 Q. How did your -- well let me begin
22 again.23 Did your duties change in any way
24 with regard to AOL at the time that AOL and Time
25 Warner merged in January 2001?

15

16

1 GREGORY BEAMS

2 A. When AOL changed its year-end to
3 December 31, I took over primary day-to-day
4 responsibilities as the senior manager for the
5 audit.6 Q. And what happened to Mr. Klein at
7 that time?8 A. Mr. Klein rotated onto -- actually
9 he had other accounts at December 31. He stayed
10 with those accounts.11 Q. Can you explain to me, when you
12 became a partner in July of 2001, did your role
13 with regard to the audit of AOL Time Warner
14 change in any way?15 A. At that time I became the engagement
16 partner for AOL, the AOL division, along with
17 Ken Marceron, who was more of the coordinating
18 partner, if you will, I reported to Ken. But I
19 had day-to-day responsibilities at the partner
20 level for execution of the audit.

21 Q. Of the AOL division?

22 A. Of the AOL division. Yes.

23 Q. And is it correct that Mr. Hurst
24 moved to the audit of AOL Time Warner, the
25 corporate entity?

Hurst, H. Stephen Vol. I 7/11/2006 9:05:00 AM

1
2 0001 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES
4 -----x
5 Coordination Proceeding Special Title,
6 (Rule 1550(b):
7 AOL TIME WARNER CASES I & II
8 Coordinated Actions:
9
10 Regents of the University of California,
11 et al. vs. Parsons, et al.
12 (L.A. Super. Ct. No. BC293848)
13 California Public Employees' Retirement System
14 vs. AOL Time Warner, Incorporated
15 (Sacramento Super. Ct. No. 03AS04015)
16 California State Teachers' Retirement System
17 vs. AOL Time Warner, Incorporated
18 (S.F. Super. Ct. No. CGC-03-422609)
19 -----x
20 FRANKLIN COUNTY COMMON PLEAS COURT
21 COLUMBUS, OHIO
22 Ohio Public Employees' Retirement System,
23 et al. vs. Richard d. Parsons, R.E.
24 "Ted Turner," et al.
25 (Case no. 03CVH07-7932)
26 -----x
27 Videotaped Deposition of
28 H. STEPHEN HURST
29 Held on: Tuesday, July 11, 2006
30 9:05 a.m.
31 Held at: Heller Ehrman LLP
32 7 Times Square
33 New York, New York
34 Before Nancy Mahoney, CSR/RPR
35 Notary Public in and for the State of New York

1 APPEARANCES:
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9 BY: MICHAEL DOWD, ESQ.
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12 Retirement System
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15 BY: MELINDA D. RODON, ESQ.
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3
4
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9
10
11 ALSO PRESENT:
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13 Director of Forensic Accounting
14 Lerach Coughlin Stoia Geller
15 Rudman & Robbins LLP
16
17 MICHAEL CRANE
18 JOYCE GREGO
19 Ernst & Young
20
21 Richard Bly, Videographer
22 LegaLink Action Video
23
24
25

1 THE VIDEOGRAPHER: This is the video
2 operator speaking, Richard Bly of LegaLink
3 Action Video, located at 420 Lexington Avenue,
4 New York, New York. The court reporter is Nancy
5 Mahoney of LegaLink Manhattan, located at 420
6 Lexington Avenue, New York, New York.
7 Today's date is July 11th, 2006.
8 The time on the record is 9:07 a.m.
9 We are at the offices of Heller
10 Ehrman, located at 7 Times Square, New York, New
11 York to take the videotaped deposition of H.
12 Stephen Hurst in the matter of AOL/Time Warner
13 Cases I and II Coordinated Actions before the
14 Superior Court of the State of California for
15 the County of Los Angeles, and also the Ohio
16 Public Employees' Retirement System, et al.
17 versus Richard D. Parsons Re Ted Turner, et al.,
18 before the Franklin County Common Pleas Court
19 Columbus, Ohio, case number 03CVH07-7932
20 Will counsel please introduce
21 themselves.
22 MR. DOWD: Michael Dowd, Lerach
23 Coughlin, representing certain plaintiffs in
24 Ohio and the California actions and also with me
25 is Andy Rudolph.

Hurst, H. Stephen Vol. I 7/11/2006 9:05:00 AM

1 MS. RODON: Melinda Rodon, Kaplan
 2 Fox & Kilsheimer, representing certain
 3 California plaintiffs.
 4 MR. HUBBELL: Good morning, Robert
 5 Hubbell of Heller Ehrman for defendant Ernst &
 6 Young LLP and the witness. With me today is
 7 Michael Crane -- are Michael Carne and Joyce
 8 Grego from the Ernst & Young general counsel's
 9 office.
 10 MS. SKAISTIS: Rachel Skaistis,
 11 Cravath, Swaine & Moore LLP for the company.
 12 MR. KRAVITZ: Carl Kravitz from
 13 Zuckerman Spaeder LLP for David Colburn.
 14 THE VIDEOGRAPHER: Would please
 15 swear the witness.
 16 H. STEPHEN HURST,
 17 having been first duly sworn by the Notary
 18 Public (Nancy Mahoney), was examined and
 19 testified as follows:
 20 EXAMINATION BY MR. DOWD:
 21 Q. Good morning, sir.
 22 A. Good morning.
 23 Q. My name is Mike Dowd. I'm an
 24 attorney with Lerach Coughlin in San Diego. We
 25 represent certain plaintiffs in litigation

5
 1 H. STEPHEN HURST
 2 against AOL/Time Warner, certain individual
 3 defendants and Ernst & Young.
 4 We've never met before this
 5 morning. Is that correct?
 6 A. That's correct.
 7 Q. Could you state your name for the
 8 record, please, and spell your last name?
 9 A. It's H. Stephen Hurst, H-u-r-s-t.
 10 Q. And what is your current work
 11 address?
 12 A. 5 Times Square, New York, New York.
 13 Q. And who is your current employer?
 14 A. Ernst & Young.
 15 Q. And what is your home address?
 16 A. My home address is 150 West 75th,
 17 New York, New York.
 18 Q. Have you had your deposition taken
 19 before today?
 20 A. Yes.
 21 Q. And I believe you had your
 22 deposition taken four times by the SEC in
 23 connection with audits of AOL/Time Warner. Is
 24 that correct?
 25 A. Yes.

7
 1 H. STEPHEN HURST
 2 Q. In addition to those depositions,
 3 have you had your deposition taken before?
 4 A. Yes.
 5 Q. And how many times?
 6 A. I'm not sure how many times.
 7 Various matters, probably six, seven.
 8 Q. Tell me as best you recall about
 9 those six or seven times that you were deposed,
 10 what the cases were about.
 11 A. There was a case against Ernst &
 12 Young brought by Sunshine Mining a number of
 13 years ago, several depositions in connection
 14 with that, and I don't recall the others.
 15 Q. How recent were the Sunshine Mining
 16 depositions?
 17 A. I believe those were in 1999, 2000.
 18 Q. And what were the allegations in
 19 that case, as best you understood it, against
 20 Ernst & Young?
 21 A. Ernst & Young had resigned from
 22 serving Sunshine Mining and Sunshine Mining had
 23 sued us over that resignation.
 24 Q. And why had Ernst & Young resigned?
 25 A. I'm sorry, I didn't hear you.

8
 1 H. STEPHEN HURST
 2 Q. Why had Ernst & Young resigned?
 3 A. We had resigned because we chose
 4 not to serve them any longer.
 5 Q. And why was that?
 6 A. Because they were not a client we
 7 wanted to serve any longer.
 8 Q. For any particular reason?
 9 A. Various reasons.
 10 Q. Tell me about that.
 11 A. The firm has a policy that it
 12 reviews periodically whether they want to serve
 13 any particular client, and it runs to risk,
 14 integrity of management, various factors.
 15 Q. And do you recall any of the other
 16 companies that you were involved in depositions
 17 with?
 18 A. I don't.
 19 Q. Were they before or after the
 20 Sunshine Mining depositions?
 21 A. Must have been before them.
 22 Q. You understand then, I take it,
 23 that during the course of the next couple of
 24 days I'm going to ask you a series of questions
 25 and answers -- or you're going to hopefully give

Hurst, H. Stephen Vol. I 7/11/2006 9:05:00 AM

21

22

1 H. STEPHEN HURST

2 Q. When you first came on board with
3 AOL, did you -- what was your title, was it
4 coordinating partner, engagement partner?

5 A. I was the coordinating partner.

6 Q. And who reported to you on that
7 first audit, say, June 30th, 1999?8 A. It was another partner, John
9 Shames, who was an engagement partner and the
10 rest of our team.11 Q. What's the difference between an
12 engagement partner and the coordinating partner?13 A. The coordinating partner has
14 overall responsibility for the conduct of the
15 audit and -- in other words, signing for the
16 firm. The engagement partner has duties
17 reporting to the coordinating partner as a
18 coordinating partner assigns those duties to the
19 engagement partner involved in various aspects
20 of the audit.

21 Q. So you were in charge?

22 A. I was in charge.

23 Q. And how long did Mr. Shames stay in
24 that role with the AOL audits?

25 A. He was in the role before that

1 H. STEPHEN HURST

2 audit and through the better part of the
3 following year.4 Q. Was he the engagement partner on
5 the year end 2000 audit, the June 30th, 2000
6 audit?7 A. I'm not sure if he was the
8 engagement partner as we closed out the June
9 30th, 2000 or not. I can't recall whether he
10 went through that year end or whether he only
11 went through the nine months ended March 31. I
12 don't recall.

13 Q. Somewhere in that time frame --

14 A. Yes.

15 Q. -- he left the audit?

16 Can you tell me in addition to
17 Mr. Shames who else was working on the AOL audit
18 when you came on board in June of '99?19 A. I may not remember all of the
20 people. It's been a while. Eric Klein was a
21 senior manager, Steve Kenny was a manager, Eddie
22 Paul was on our staff, Ryan Coopersmith was on
23 the staff, I believe a Craig Romero was on the
24 staff, and there would have been other staff in
25 addition.

23

24

1 H. STEPHEN HURST

2 Q. Had you worked with Mr. Shames
3 prior to your reassignment to AOL?

4 A. No.

5 Q. Had you worked with any of the
6 managers or staff auditors, to the best of your
7 knowledge --

8 A. No.

9 Q. -- when you came on board? You got
10 to be careful again to just -- let's not both
11 talk at the same time.12 After Mr. Shames left the audit in
13 calendar year 2000, who replaced him as the
14 engagement partner?15 A. We had another person come in to
16 the area, joined the office. He was a senior
17 manager, Greg Beams.18 Q. And was there an engagement partner
19 at that point in time?

20 A. No.

21 Q. So it went from you to Mr. Beams as
22 the next highest person?

23 A. That's correct.

24 Q. When did Mr. Marceron come on
25 board?

1 H. STEPHEN HURST

2 A. Mr. Marceron joined the team for
3 the calendar 2001 audit, so that would have been
4 January, February of 2001.5 Q. And was there any particular reason
6 why Mr. Marceron was selected to become involved
7 in the audit?8 A. Mr. Marceron had consulted with me
9 on a number of revenue recognition questions.
10 He was in our national SEC practice at the time,
11 and so he had a fair amount of knowledge of AOL,
12 and we needed to add experience to the team when
13 I moved to New York.14 Q. So he came on board just as you
15 were moving up to the AOL/Time Warner
16 engagement?

17 A. Yes.

18 Q. You said he had consulted with you
19 on a number of occasions with regard to revenue
20 recognition issues.

21 A. Yes.

22 Q. Can you tell me which issues you
23 recall talking to him about before he came on
24 board the AOL team?

25 A. I don't recall.

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1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION			
2			
3 In the Matter of:			
4) File No. HO-09429-A			
5 AOL-TIME WARNER, INC.			
6 WITNESS: David Martin Colburn			
7 PAGES: 1 through 219			
8 PLACE: Securities and Exchange Commission			
9 100 F Street, N.E., Testimony Room 6			
10 Washington, D.C.			
11 DATE: Wednesday, April 25, 2007			
12			
13 The above entitled matter came on for hearing, pursuant			
14 to notice, at 9:19 a.m.			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24 Diversified Reporting Services, Inc.			
25 (202) 467-9200			
Page 2	CONTENTS (Continued)		Page 4
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2			
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5 THOMAS D. MANGANELLO, ESQ.			
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1	A I do.	1 Q Okay.
2	Q Okay. And did you talk to him or ask him what he	2 A -- of the e-mail.
3	meant by that?	3 Q Did you seek any accounting or legal advice in
4	A I don't think I ever talked to him about.	4 connection with your receipt of this e-mail?
5	Q Okay. Did you ask -- did you understand what he	5 A We sought advice on the entire transaction.
6	meant by that?	6 Q But specifically with regard to this e-mail and the
7	A Well, as I recall -- and there may be e-mails in-	7 characterization --
8	between -- I was oftentimes confused by his responses which,	8 A Again, I -- again, to me, I didn't take any
9	as I think people see, are beyond the colorful and over-the-	9 characterization away from what he wrote. Again, I sent it
10	top. I just couldn't tell if the two teams were talking	10 to the deal team to understand are there any issues here, are
11	about different things which, at the end of the day, it	11 we talking about the same thing.
12	appears to me -- I don't think we ever found out the answer	12 Q Okay.
13	because, remember, there's discussions going down both at the	13 BY MR. AGBE-DAVIES:
14	next level and at this level.	14 Q Other than Mr. Haire and Mr. Prince, did you have
15	But the question comes down to -- which I have said	15 any discussions or conversations with anybody at AOL about
16	now I think five or six times is we are looking to get	16 this, you know, money changing scheme e-mail, I think it's
17	additional value and take care of the third quarter of this	17 Exhibit 877, that Mr. Sullivan had used that term or the
18	liability. Whether he understanding that's what our ask is	18 contents of the e-mail?
19	and he's just saying this, that no, that's too much value --	19 A The contents of the e-mail being that he doesn't
20	because you see in the next thing he's still I think a little	20 understand the transaction we were proposing or the contents
21	bit -- I don't know -- spiteful is the wrong word, but he's	21 of the e-mail that he's saying no to the transaction we're
22	not happy that we already tried to ask for additional value	22 proposing?
23	for giving him the -- giving WorldCom the voice data deal.	23 Q In the context -- I mean the content of the e-mail
24	But it comes down to the question: did he	24 where he's saying this has turned into a money changing
25	understand what we were trying to do was get additional value	25 scheme.
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1	for that third quarter or is that just something he doesn't	1 A But again, that's just a characterization. The
2	even realize that that money is still out there accruing.	2 deal is what the deal is.
3	Q And you don't have a recollection of ever trying	3 Q I understand.
4	to -- I'm sorry. Okay.	4 A And a transaction is a transaction. So there's
5	Did you -- were you concerned by his use of that	5 only two things -- beyond sending it to the people who are
6	language, that this was a money changing scheme?	6 doing the deal, I -- right, I take from it two things.
7	A Not even for a second, as I recall, other than just	7 Either he doesn't understand the transaction we're doing, A,
8	trying to understand what is he talking about. Are we just	8 or that we proposed, or B, he's saying no.
9	on different planets as far as the structure of this or is he	9 Q Let me ask you my question another way because I
10	just saying he doesn't want to do it. And I think ultimately	10 don't think you've answered my question.
11	we decided we're never going to get to the bottom of this so	11 Did you talk to anyone at the company, at AOL, that
12	we just did the two quarter, the three years, the ads and	12 Mr. Sullivan is characterizing, you know, whatever
13	moved on.	13 arrangement you thought you had with his company -- was
14	Q Well, wasn't there an agreement in principle as to	14 characterizing that arrangement as a money changing scheme?
15	what would happen with the 7- or \$8 million?	15 A But again, I took this response -- so beyond
16	A I don't recall.	16 forwarding the e-mail to the guys on the transaction team, I
17	Q Did you discuss whether or not AOL should pro --	17 took this as an e-mail either he doesn't understand what
18	I'm sorry.	18 we're doing or he's saying no. So did I communicate to
19	Did you have any discussions or communications	19 anybody either he doesn't understand what we're doing or that
20	about this e-mail exchange with anybody within the company?	20 he was saying no? Possibly I did. Whether I mentioned the
21	A Which e-mail exchange are we talking about?	21 money changing scheme, I would highly doubt it because to me
22	Q I'm sorry. The money changing scheme e-mail in	22 it's just his way of saying either I don't want to do it or I
23	Exhibit 877.	23 don't understand.
24	A Clearly Andrew Haire is copied on this. I think	24 (SEC Exhibit No. 878 was marked for
25	Ted Prince got a copy --	identification.)

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<p>1 So essentially we're thinking, okay, let's solve 2 that as well. And if we're able to solve that the way we 3 propose it, that's \$25 million of value to us, not 17, 4 because in theory that's a \$25 million liability, not a 17. 5 It's only 17 for the first two quarters.</p> <p>6 Now, whether they understood that we were trying to 7 take the 17 value to 25 and therefore they're saying no here 8 really or they don't even understand what we're saying is 9 never clear to me because I think we end up dropping the 10 request to deal with the third quarter.</p> <p>11 Q Okay.</p> <p>12 A Or the last quarter. I don't want to keep calling 13 it the third. The third quarter being one of three.</p> <p>14 Q Didn't Mr. Sullivan agree that they would be 15 willing to enter into a \$25 million advertising contract as 16 long as AOL was willing to pay \$25 million?</p> <p>17 A But it appears that one of the things that's 18 missing from this communication is we are looking for the 19 forgiveness of all the liability.</p> <p>20 Q Uh-huh.</p> <p>21 A And that's the one thing that, again, do they 22 understand we're asking for it and saying, hey, they're 23 asking for too much liability or they just don't even 24 understand what we're asking for.</p> <p>25 Q I see.</p>	<p>1 number of E00057 through 62.</p> <p>2 BY MR. FINNELL:</p> <p>3 Q Do you recognize Exhibit 877?</p> <p>4 A Generally.</p> <p>5 Q Okay. And this is an e-mail you sent on November 5 6 to Mr. Sullivan?</p> <p>7 A Apparently, yes.</p> <p>8 Q Okay. And you've reviewed this document in 9 preparation for your testimony today?</p> <p>10 A Yes.</p> <p>11 Q Okay. And does your review of Exhibit 877 refresh 12 your recollection in any way about the AOL transaction beyond 13 what you've testified to?</p> <p>14 A No. It just confirms what I've been saying, which 15 is either Mr. Sullivan is terribly confused over what our 16 offer is dealing with the last quarter of the accrued 17 liability or he understands exactly what we're asking for and 18 he sees that we really want 25 million of value for the 19 entire voice data transaction, one or the other. He is doing 20 what I think Mr. Sullivan typically did, is being a little 21 prickly, a little over the top, a little whatever so he can 22 just move on with whatever he wants to do next. So I think 23 that's consistent with what I testified to earlier.</p> <p>24 Q Okay. Well, did you understand that Mr. Sullivan 25 was agreeing to purchase \$17 million in advertising instead</p>	<p>1 of forgiving -- instead of giving a credit on the AOL Europe 2 liability as an accommodation to AOL?</p> <p>3 A That's what he writes.</p> <p>4 Q Was that your understanding?</p> <p>5 A Mr. Sullivan is not one to do a lot of 6 accommodating. I don't think I focused, you know, on that 7 language one way or the other.</p> <p>8 Q Did Mr. Sullivan ever say anything to you that led 9 you to believe that he actually was pursuing the advertising 10 because that's something he wanted?</p> <p>11 A I don't think he ever indicated that to me, no.</p> <p>12 Q And had Mr. Sullivan not consistently indicated to 13 you that he was willing to do the advertising as something to 14 help you out?</p> <p>15 A Had he consistently said That --</p> <p>16 Q Yes, in the course of your e-mails and discussions, 17 wasn't that the nature of the discussion, that it was not 18 something that WorldCom wanted to do but that if you needed 19 the help, he would be willing to help you out?</p> <p>20 A Again, that was, I think, consistent with how 21 Mr. Sullivan negotiated.</p> <p>22 Q Okay. And Mr. Sullivan in this e-mail to you 23 indicates that he believes the transaction or the proposed 24 transaction has turned into a money changing scheme and it 25 can't continue. Do you see that?</p>